

**SECTION 00 70 00  
GENERAL CONDITIONS**

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**ARTICLE 1—DEFINITIONS AND TERMINOLOGY****1.01 Defined Terms**

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below, unless otherwise defined elsewhere. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.

*Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.

*Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract terms, identifies the parties and the Engineer, and designates the specific items that are Contract Documents. A "Task Order" sets forth a specific scope of Work along with applicable Contract Price and Contract Times and is more specifically defined in the Agreement.

*Application for Payment*—The document prepared by Contractor, in a form acceptable to Owner, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

*Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. Bid may refer to a proposal as well.

*Bidder*—An individual or entity that submits a Bid to Owner. Bidder may refer to a proposer or offeror as well.

*Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda. Bidding Documents may refer to proposal documents as well.

*Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments. Bidding Requirements may refer to proposal requirements as well.

*Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.

*Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or seeking other relief with respect to the terms of the Contract.

***Claim***

- a. A demand or assertion by Contractor to Owner, duly submitted in compliance with the procedural requirements set forth herein, seeking an

adjustment of Contract Price or Contract Times, or seeking other relief with respect to the terms of the Contract.

- b. A demand for money or services by a third party is not a Claim.

*Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

*Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.

*Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.

*Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.

*Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.

*Contractor*—The individual or entity with which Owner has contracted for performance of the Work, named as such in the Agreement.

*Cost of the Work*—See Paragraph 13.01 for definition.

*Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

*Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

*Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.

*Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

*Engineer*—The individual or entity named as such in the Task Order.



*Field Order*—A written order issued by Owner which requires minor changes in the Work but does not change the Contract Price or the Contract Times.

*Governmental Unit* – Means, other than Owner, any federal, state, or local government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or entity.

*Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.

- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
- b. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.

**Job Order - used interchangeably with “Task Order” in this document. A written order issued by the Owner, requiring the Contractor to complete the Detailed Scope of Work within the Task Order Contract Time for the Task Order Contract Price. A project may consist of one or more Job Orders [Addendum No. 2]**

*Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all Governmental Units.

*Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.

*Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.

*Notice of Award*—The written notice by Owner to Contractor accepting Contractor’s Bid or proposal.

*Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

*Owner*—Alexandria Renew Enterprises, an authority duly organized and existing under the laws of the Commonwealth of Virginia.

*Owner’s Consultant* – An individual or entity having a contract with Owner to furnish services with respect to the Project as an independent professional associate or consultant and who is identified in the Contract Documents.

*Owner-Related Party* – Owner, Engineer, Owner’s Consultant, Project Representative, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

*Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.

*Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.

*Project Representative*—The authorized representative of Owner assigned to assist Owner at the Site. As used herein, the term Project Representative includes any assistants or field staff of Project Representative.

*Request for Proposals*—A formal request from the Owner to public or selected Respondents or Bidders to submit a proposal. May be used in conjunction with or in place of an Invitation to Bid.

*Request for Qualifications*—A formal request from the Owner to public or selected Respondents or Bidders to submit a statement of qualifications. May be used in conjunction with or in place of an Invitation to Bid.

*Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.

*Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Owner’s review of the submittals.

*Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.

*Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

*Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.

*Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.

*Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

*Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Owner, or that is indicated as a Submittal in the Schedule of Submittals accepted by Owner. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Owner, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

*Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion of such Work.

*Successful Bidder or Proposer*—Contractor.

*Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.

*Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.

**Task Order Proposal - A set of documents in response to an Owner-identified scope as defined in Section 2.06. [Addendum No. 2]**

**Task Order Price Estimate - A price proposal prepared by the Contractor that includes the Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Work in the Task Order Proposal. [Addendum No. 2]**

*Technical Data* - Those items expressly identified as Technical Data in the Supplementary Conditions **Task Order Agreement**, [Addendum No. 2] including but not limited to (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.

*Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam,

waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

*Unit Price Work*—Work to be paid for on the basis of unit prices.

*Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

*Work Change Directive*—A written, signed directive from Owner to Contractor issued on or after the Effective Date of the Contract ordering an addition, deletion, or revision in the Work.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed,” and the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import. Such words are used to describe an action or determination of Owner as to the Work. It is intended that such action or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Owner any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 9 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
  - 1. does not conform to the Contract Documents; or
  - 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents.
- E. *Furnish, Install, Perform, Provide*
  - 1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
  3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
  4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

## ARTICLE 2—PRELIMINARY MATTERS

### 2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: No later than 15 days after Notice of Award, Contractor shall deliver to Owner the performance bond and payment bond required to be provided by Contractor in accordance with Article 6.
- B. *Evidence of Contractor’s Insurance*: No later than 15 days after Notice of Award, Contractor shall deliver to Owner, with copies to each additional insured (as identified in Paragraph 6.03.C), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except that any evidence of builder’s risk insurance shall not be required to be provided until the date specified in the Notice to Proceed for any Task Order. If additional insurance is required with respect to a particular Task Order, evidence of that shall be provided by the date specified in the Notice to Proceed for such Task Order.
- C. *Evidence of Owner’s Insurance*: After receipt of all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in Paragraph 6.03.C), the certificates and other evidence of insurance required to be provided by Owner under Article 6.
- D. For the avoidance of doubt, regardless of the date specified in a Notice to Proceed, Contractor shall not be permitted to begin Work at the Site until Contractor complies with its obligations in Paragraph 2.01.A and B above.

### 2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four (4) printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable

document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

- B. Owner shall maintain and safeguard at least one (1) original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review.

### 2.03 **Contractor Selection and Award of Individual Task Orders**

**Owner may award an individual Task Order to any selected Contractor. Selection of the Contractor and award of the Task Order will be in compliance with established Owner procedures and based on one or more of the following criteria:**

1. **Location of Work and the type of Work being performed.**
2. **Rotational selection among all Contractors, unless otherwise determined by the Owner.**
3. **Evaluation of past and current performance on Task Orders of a similar nature and type of work, project size, construction management challenges, schedule.**
4. **Task Order design, performance, and schedule requirements.**
5. **Balancing of workload (Task Order dollar volume and construction backlog) among Contractors.**
6. **Management of Task Order dollar volume within bonding limitations of the Contractor.**
7. **Price, as it relates to the Owner's independent cost estimate.**
8. **Contractor's responsiveness to the Owner on Task Orders.**

#### *Before Starting Construction*

~~A. **Preliminary Submittals:** Within ten (10) days after the Effective Date of the Task Order (or as otherwise required by the Contract Documents), Contractor shall submit to Owner for timely review:~~

- ~~1. a preliminary Progress Schedule in conformance with Division 01 of the Specifications indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;~~
  - ~~2. a preliminary Schedule of Submittals; and~~
  - ~~3. a preliminary Schedule of Values in conformance with Division 01 of the Specifications for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.~~
- [Addendum No. 2]*

2.04 ~~Preconstruction Conference; Designation of Authorized Representatives~~ Initiation of a Task Order

A. As the need exists, the Owner will notify the Contractor of a Project, schedule a Joint Scoping Meeting and issue a Notice of Joint Scoping Meeting. The Contractor shall attend the Joint Scoping Meeting and discuss all items included in the Task Order Agreement, including but not limited to:

1. The general scope of the Work;
2. Contract Times;
3. Milestones;
4. Liquidated Damages;
5. Any Technical Data, Specifications, and Drawings to be referenced;
6. Any required Submittals; and
9. Date on which the Task Order Proposal is due.

B. Joint Scoping Meeting shall include a site visit to the location of the Project.

C. Upon completion of the Joint Scoping Meeting, the Contractor will prepare a draft Detailed Scope of Work referencing any items discussed at the Joint Scoping Meeting to document accurately the work to be accomplished.

D. The Owner shall review the Detailed Scope of Work and request any required changes or modifications.

E. When a Detailed Scope of Work has been agreed upon, the Owner will issue a Request for Proposal that will require the Contractor to prepare a Task Order Proposal.

F. The approved Detailed Scope of Work, unless modified by both the Contractor and the Owner, will be the basis on which the Contractor will develop its Task Order Proposal and the Owner will evaluate the same.

~~A. Before any Work at the Site is started, a conference attended by Owner, Contractor, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the Submittals referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.~~

~~B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party. [Addendum No. 2]~~

~~2.05 Acceptance of Preliminary Submittals~~

~~A. At least 10 days before submission of the first Application for Payment a conference, attended by Owner, Contractor, and others as appropriate, will be held to review the Submittals submitted in accordance with Paragraph 2.03.A. No~~

~~progress payment will be made to Contractor until acceptable Submittals are submitted to Owner.~~

- ~~1. The Progress Schedule will be acceptable if it provides an orderly progression of the Work to completion within the Contract Times, and is compliant with the schedule requirements set forth in Division 01 of the Specifications. Such acceptance will not impose on Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.~~
- ~~2. Contractor's Schedule of Submittals will be acceptable if it provides a workable arrangement for reviewing and processing the required submittals.~~
- ~~3. Contractor's Schedule of Values will be acceptable as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work and is compliant with the Schedule of Values requirements set forth in Division 01 of the Specifications.~~
- ~~4. If a foregoing submittal is not acceptable, Contractor will have an additional 10 days to revise and resubmit the Submittal. [Addendum No. 2]~~

#### **2.056 Electronic Transmittals [Addendum No. 2]**

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

#### **2.06 Preparation of The Task Order Proposal**

- A. **The Contractor's Task Order Proposal shall include, at a minimum:**
  1. **Task Order Contract Price estimate;**
  2. **Any required drawings or sketches;**
  3. **List of anticipated Subcontractors;**
  4. **Preliminary Schedule of Values;**
  5. **Preliminary Progress Schedule; and**
  6. **Other requested documents.**
- B. **Task Order Contract Price will either lump sum or Unit Price Work, in accordance with Article 13, as mutually agreed by Owner and Contractor prior to Task Order Proposal submission by the Contractor.**



**C. Once the Task Order Proposal has been agreed upon, Owner and Contractor will sign Task Order Agreement.**

**D. No Work shall begin until execution of the Task Order Agreement.** [Addendum No. 2]

### **ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### **3.01 Intent**

- A. The Contract Documents comprise the entire agreement between Owner and Contractor governing the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project. In resolving inconsistencies among two or more components of the Contract Documents, the precedence shall be as set forth in the Agreement.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to the Owner.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral. Owner is not responsible for any representation or purported agreement concerning conditions or contract requirements made by any employee, agent or representative of Owner prior to the Effective Date of the Contract, unless such representation or understanding is expressly stated in the Contract Documents.
- E. Owner will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Each and every clause or other provision required by law to be inserted in these Contract Documents shall be deemed to be inserted herein, and they shall be read and enforced as though it were included herein, and if through mistake or otherwise, any such provision is not inserted, or if not correctly inserted, then upon the application of either party, the Contract Documents shall forthwith be amended to make such insertion.

G. Nothing in the Contract Documents creates:

1. any contractual relationship between Contractor and Engineer, Owner's Consultant, or Project Representative, or any third-party beneficiary rights to Contractor;
2. any contractual relationship between: (i) Owner, Engineer, Owner's Consultant, or Project Representative; and (ii) any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
3. any obligation on the part of Owner to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

A. *Standards Specifications, Codes, Laws and Regulations*

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Owner, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01. Contractor shall not be entitled to any adjustment for any unreported conflict, error, ambiguity, or discrepancy that Contractor had actual knowledge of.

2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Owner in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Owner, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01. Contractor shall not be entitled to any adjustment for any unreported conflict, error, ambiguity, or discrepancy that Contractor had actual knowledge of.
3. Contractor shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

**B. *Resolving Discrepancies***

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Owner take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
  - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
  - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

**3.04 *Requirements of the Contract Documents***

- A. During the performance of the Work and until final payment, Contractor shall submit to Owner in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Owner will be the final interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work, subject to Contractor's rights to submit a Claim in accordance with Article 12 hereof.

**3.05 *Reuse of Documents***

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

- copies thereof on extensions of the Project or any other project without written consent of Owner and specific written verification or adaptation by Engineer; or
2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment under any Task Order, or termination of the Contract or any Task Order. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

#### **ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK**

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

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed.

##### **4.02 *Starting the Work***

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work may be done at the Site prior to such date.

##### **4.03 *Reference Points***

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

##### **4.04 *Progress Schedule***

- A. Contractor shall submit updated Progress Schedules at the times and in the manner set forth in Division 01 of the Specifications. Updated Progress Schedules shall not change the Contract Times. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Paragraph 4.05 and Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

#### 4.05 *Delays in Contractor's Progress*

- A. If Owner or anyone for whom Owner is responsible delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to submit a request for an equitable adjustment in Contract Price or Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not in existence at the time of execution of the Task Order and not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to submit a request for an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
  1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. Weather conditions that are more severe than those for the five (5) year NOAA averages for the locale of the Project;
  3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price is limited as follows:
  1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.

- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are also conditioned upon the provisions of Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site and obtain and pay for easements for permanent structures or permanent changes in existing facilities. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

## 5.02 Use of Site and Other Areas

### A. Limitation on Use of Site and Other Areas

1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
  2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless, the Owner-Related Parties from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against any Owner-Related Party to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations. If Contractor fails to comply with this Paragraph 5.02.B, Owner shall have the right to take corrective action and charge the costs of doing so to Contractor, including withholding amounts otherwise due Contractor to reimburse Owner's costs of doing so.

- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents. If Contractor fails to comply with this Paragraph 5.02.C, Owner shall have the right to take corrective action and charge the costs of doing so to Contractor, including withholding amounts otherwise due Contractor to reimburse Owner's costs of doing so.
- D. *Loading of Structures*: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

### 5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings*: For each Task Order, the **Task Order Agreement identifies Supplementary Conditions** identify: [Addendum No. 2]
1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
  2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
  3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.
- C. *Reliance by Contractor on Technical Data*: Contractor may reasonably rely upon the accuracy of the Technical Data expressly identified in the **Task Order Agreement Supplementary Conditions** with respect to such reports and drawings, but such reports and drawings are not Contract Documents. [Addendum No. 2]
- D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner, or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;



3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

#### 5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
  1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  3. differs materially from that shown or indicated in the Contract Documents; or
  4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall promptly, but in no event later than 48 hours after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. *Owner's Review:* After receipt of written notice as required by the preceding paragraph, Owner will promptly review the condition in question; determine whether it is necessary to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; and advise Contractor in writing of its findings and conclusions.
- C. *Possible Price and Times Adjustments*
  1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
    - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
    - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
    - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.

2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
  - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, Task Order or otherwise;
  - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment **in a Task Order Agreement;** or [Addendum No. 2]
  - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

D. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

A. Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the **Task Order Agreement** ~~Supplementary Conditions:~~

1. Owner shall not be responsible for the accuracy or completeness of any such information or data; and
2. the cost of all of the following shall be included in the Contract Price, and Contractor shall have full responsibility for:
  - a. reviewing and checking all such information and data,
  - b. locating all Underground Facilities shown or indicated in the Contract Documents,

- c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction, and
    - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
  3. In accordance with Paragraph 5.05.A.2, it is understood and agreed that the Contract Price includes all of the permanent and temporary Underground Facilities in their present or relocated positions, and Contractor agrees that no additional compensation will be allowed for normal delays, inconvenience, or damage sustained by Contractor due to any interference from said Underground Facilities, the operation of moving the Underground Facilities, the making of new connections thereto if required by the Contract Documents, or by any other requirements of the owner(s) of the Underground Facilities.
- B. *Not Shown or Indicated:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, then Contractor shall, promptly (but in no event later than 48 hours) after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner in writing regarding such Underground Facility.
- C. *Owner's Review:* Owner will:
  1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings;
  2. identify and communicate with the owner of the Underground Facility;
  3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
  4. advise Contractor in writing of its findings and conclusions.During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Early Resumption of Work:* If at any time Owner determines that Work in connection with the Underground Facility may resume prior to completion of Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then Owner may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
  1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
  3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

#### 5.06 Hazardous Environmental Conditions at Site

A. **Reports and Drawings: For each Task Order, the Task Order Agreement identify:**  
~~The Supplementary Conditions identify: [Addendum No. 2]~~

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. **Reliance by Contractor on Technical Data Authorized:** Contractor may rely upon the accuracy of the Technical Data expressly identified in the **Task Order Agreement** ~~Supplementary Conditions~~ with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46-b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner, or any of its officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to: *[Addendum No. 2]*

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Where Hazardous Environmental Conditions are shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, Contractor shall take such action as is necessary, in accordance with applicable Laws and Regulations, to plan for and to remediate and render harmless

all such Hazardous Environmental Conditions. Remediation plans for such known Hazardous Environmental Conditions shall be provided to Owner for approval prior to undertaking the remediation.

- D. If Contractor encounters any unknown Hazardous Environmental Conditions at the Site, it shall stop Work immediately in the affected part of the Work to the extent required to avoid any such safety or health hazard until it has taken such action as is necessary, in accordance with pertinent Laws and Regulations, to protect the interests of any affected party. Contractor shall, immediately upon encountering any Hazardous Environmental Conditions at the Site, notify Owner and, if required by Laws and Regulations, all Governmental Units with jurisdiction over the Project or Site.
- E. Contractor shall take all necessary measures required to ensure that Hazardous Environmental Conditions are remediated or rendered harmless in accordance with pertinent Laws and Regulations. Contractor shall, prior to proceeding with any such work: (a) obtain all environmental site assessments of the affected property and submit copies of such assessments to Owner for its approval; (b) develop remediation plans for the Hazardous Environmental Conditions, subject to Owner's approval; and (c) obtain all pertinent permits to implement such plans. During the period of any investigation and remediation efforts, Contractor shall take all necessary measures to isolate and contain such Hazardous Environmental Conditions from the unaffected parts of the Work, and shall continue the Work to the maximum extent possible on unaffected parts of the Work.
- F. Except for those Hazardous Environmental Conditions set forth in Paragraph G below, Contractor will be entitled to submit a request for an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of unknown Hazardous Environmental Conditions. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- G. Notwithstanding anything to the contrary in the Contract Documents, Contractor shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (a) any Hazardous Environmental Conditions present at, on, in or under, or migrating and/or emanating to or from the Site, that were generated by or brought or caused to be brought on the Site by any act or omission of Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible; (b) those Hazardous Environmental Conditions identified in paragraph C above; and (c) the creation or exacerbation of any Hazardous Environmental Condition due to the negligence, recklessness or willful misconduct of Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend and hold harmless the Owner-Related Parties from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from (a), (b) and/or (c) above.

- H. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

5.07 *Historical Artifacts.*

- A. All articles of historical or scientific value, including but not limited to coins, fossils, and articles of antiquity, which may be uncovered by Contractor during the progress of the Work shall become Owner's property. Such findings shall be reported immediately to Owner, who will determine the method of removal, where necessary, and the final disposition thereof. If Contractor establishes that such discoveries have directly and materially impacted Contractor's cost or time of performance, then Contractor will be entitled to submit a request for an adjustment to the Contract Price and/or Contract Time(s) to the extent Contractor's cost and/or time of performance have been adversely impacted by the presence, removal or remediation of unknown Hazardous Environmental Conditions. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

**ARTICLE 6—BONDS AND INSURANCE**

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, as prescribed in the Supplementary Conditions, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date of contract expiration or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract or Task Order.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Task Order, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor

shall promptly notify Owner in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.

- F. If Contractor has failed to provide Owner with a required bond within the time required by Paragraph 2.01.A, Owner may exclude the Contractor from the Site and exercise Owner's termination for cause rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

#### 6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized in the Commonwealth of Virginia to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in Paragraph 6.03.C, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other additional insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in Paragraph 6.03.C, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured,

Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.

- F. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. Contractor shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds those set forth in Paragraph 6.03.C on each Subcontractor's commercial general liability and automobile liability insurance policy; and
  - 2. Suppliers to purchase and maintain commercial general liability and any other insurance that is appropriate for their participation in the Project.
- H. If either party does not purchase or maintain the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- I. If Contractor has failed to provide Owner with the documents required by Paragraph 2.01.B within the time required by Paragraph 2.01.B, or has failed to maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination for cause rights under Article 16.
- J. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- K. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- L. The insurance and insurance limits required herein are minimums and will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or



Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

- M. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 30 days prior written notice (10 days if cancellation is for non-payment) has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to Owner and all other additional insureds.

### 6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, Automobile Liability (unless the contractor does not own or lease any vehicles, in which case, hired and non-owned coverage is to be provided as part of the Commercial General Liability) and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
1. include at least the specific coverages required;
  2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), the Contract is in effect, and longer if expressly required elsewhere in the Supplementary Conditions or elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract. In no case shall the period of coverage be terminated before a period ending one year after issuance of the final payment under any Task Order;
  4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  5. include a waiver of subrogation in favor of the Owner and all additional insureds with regard to any claim covered by the insurance policies herein required; such requirement for insurance policies to include waivers of subrogation shall also apply to any insurances required of subcontractors as denoted herein; and
  6. include all necessary endorsements to support the stated requirements.
- Contractor shall be responsible for any deductibles or self-insured retentions applicable to insurance policies carried as a result of these requirements.

- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds the Owner-Related Parties, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
  3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  4. not seek contribution from insurance maintained by the additional insured; and
  5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

#### 6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: As provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work under each Task Order on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be commercially appropriate unless specifically provided for in the Supplementary Conditions or required by Laws and Regulations). Owner shall be an insured on the policy as its interests may appear.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: In addition to the limited coverage for existing property under builder's risk, the Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner will provide Contractor advance notice of such occupancy or use and request that the Contractor provide such notice to the

builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.

- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against the Engineer, Owner's Consultant, Project Representative, and all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

- B. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against the Owner-Related Parties and all individuals or entities identified in the Supplementary Conditions as insureds, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy unless the loss was sustained by the Owner as an additional insured on the Contractor's builder's risk policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.

- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause or additional insured clause. A named insured receiving insurance proceeds of \$500,000 or more under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

## ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

### 7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and Owner has no responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

### 7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. **Contractor acknowledges the importance of its Key Personnel. Job duties and responsibilities of Key Personnel shall not be delegated to others for the duration of the Work. Contractor shall not change or substitute any Key Personnel except due to voluntary or involuntary termination of employment, retirement, death, disability, or incapacity. None of the Key Personnel may be withdrawn from the Work without prior written approval of Owner, with it being understood and agreed that Contractor will provide Owner with at least thirty (30) days written notice of any request to withdraw any Key Personnel. Owner will have the right to review the qualifications of each individual to be appointed to a Key Personnel position and to approve or disapprove use of such individual in such position prior to the commencement of any Work by such individual. Field Superintendent shall be located on-site and assigned on a full-time basis for the duration of the Work.**

**Project Manager shall be dedicated and accessible for the duration of the Work, but is not required to be located on-site.** ~~At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner except under extraordinary circumstances. Contractor's superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communication given to or received from Contractor's superintendent shall be binding on Contractor. Contractor's superintendent must be acceptable to Owner. [Addendum No. 2]~~

### 7.03 Labor; Working Hours

- A. Contractor shall provide competent, skilled, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site. Contractor shall, upon demand from Owner, immediately remove any manager, superintendent, foreman or workman whom Owner may consider incompetent or undesirable.
- B. Contractor shall be fully responsible to Owner for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions.
- C. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or Owner's observed holidays only with Owner's written consent, which will not be unreasonably withheld. Regular working hours shall be defined as 7 a.m. to 6 p.m. unless otherwise approved in advance by Owner.

### 7.04 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.

- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- D. Without limiting the responsibility or liability of Contractor pursuant to this Agreement, all warranties given by manufacturers on materials or equipment incorporated in the Work are hereby assigned by Contractor to Owner. If requested, Contractor shall execute formal assignments of said manufacturer's warranties to Owner. All such warranties shall be directly enforceable by Owner. Such assignment shall in no way affect Contractor's responsibilities and duties during the warranty period

#### 7.05 "Or Equals"

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Owner authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Owner in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Owner will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Owner determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
      - 3) has a proven record of performance and availability of responsive service.
    - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
      - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
      - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.

- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Owner's Evaluation and Determination*: Owner will evaluate each "or-equal" request. Owner may require Contractor to furnish additional data about the proposed "or-equal" item. Owner will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Owner determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Owner will advise Contractor in writing of any negative determination.
- D. *Effect of Owner's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. Owner's denial of an "or-equal" request will be final and binding.
- E. *Treatment as a Substitution Request*: If Owner determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Owner consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Owner authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
  - 1. Contractor shall submit sufficient information as provided below to allow Owner to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Owner will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
  - 2. The requirements for review by Owner will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Owner may decide is appropriate under the circumstances.
  - 3. Contractor shall make written application to Owner for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
    - a. will certify that the proposed substitute item will:
      - 1) perform adequately the functions and achieve the results called for by the general design;
      - 2) be similar in substance to the item specified; and
      - 3) be suited to the same use as the item specified.

- b. will state:
    - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
    - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
    - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
  - c. will identify:
    - 1) all variations of the proposed substitute item from the item specified; and
    - 2) available engineering, sales, maintenance, repair, and replacement services.
  - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Owner's Evaluation and Determination:* Owner will evaluate each substitute request. Owner may require Contractor to furnish additional data about the proposed substitute item. Owner will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Owner's review is complete and Owner determines that the proposed item is an acceptable substitute. Owner's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Owner will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Whether or not Owner approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Owner's Determination:* If Owner approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. Owner's denial of a substitution request will be final and binding, and



may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

#### 7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract or a Task Order to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract or a Task Order, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Owner a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.

- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

#### 7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Owner-Related Parties from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. Additionally, in the event Owner is enjoined from the operation or use of the Work or any part thereof in connection with any dispute resolution proceeding, Contractor shall (at its sole expense) take all reasonable steps possible to procure for Owner the right to operate or use the Work or part thereof. If Contractor cannot so procure the aforesaid right within a reasonable time, Contractor shall then promptly (at Contractor's sole expense): (i) modify the Work so as to avoid infringement of any patent or other proprietary interest, or (ii) replace said Work with Work that does not infringe or violate any such patent or other proprietary interest, or (iii) remove said Work and refund any compensation theretofore paid to Contractor and pay to Owner any transportation costs and other expenses that may have been paid or incurred by them in connection with the Work so removed.

### 7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract or Task Order). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

### 7.10 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- B. Certified water pollution control equipment and facilities are exempt from state Sales tax within the Commonwealth of Virginia. When applicable, Owner will submit an application for sales tax exemption to the Virginia Department of Environmental Quality. Upon receipt of this application, the Virginia Department of Environmental will evaluate the application, if appropriate, and make a certification to the Virginia Department of Taxation. If approved, the Virginia Department of Taxation will provide a tax exemption certificate to Contractor.

### 7.11 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Owner shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless the Owner-Related Parties from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract or Task Order) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

- D. Contractor shall keep fully informed of all Laws and Regulations in any manner affecting those engaged or employed in the Work or the materials used in the Work or in any way affecting the conduct of the Work.
- E. During the performance of the Contract, Contractor agrees as follows:
1. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  2. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that such Contractor is an equal opportunity employer.
  3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this paragraph.
  4. Contractor will include the provisions of the foregoing Paragraphs 1-3 in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor and Supplier.
- F. During the performance of this Contract, Contractor agrees to: (i) provide a drugfree workplace for Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the action will be taken against employees or violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each Subcontractor and Supplier.
- G. Contractor represents that it does not, and during the performance of this Contract, it shall not, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- H. Contractor represents that if it is organized as a stock or non-stock corporation, limited liability company, business trust or limited partnership or registered as a registered limited liability partnership, it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if required by law, and that it shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth of Virginia, if so required by law, to be revoked or cancelled at any time during the term of this Contract.
- I. Contractor acknowledges that Owner does not discriminate against faith-based organizations.

### 7.12 Record Documents

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings for the applicable Task Order. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Owner for reference. Upon completion of the Work, Contractor shall deliver these record documents to Owner. Contractor shall certify, to the best of its knowledge and belief, that the record documents delivered to Owner and the approved Samples are complete.

### 7.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs. This safety representative shall work with Owner to ensure that no construction activities at the Site infringe upon any activities of Owner or its employees or the existing facilities located at the Site. Further, the safety representative shall work closely with Owner to ensure that Contractor's emergency plans do not adversely affect or infringe upon the emergency or regular operations of Owner's existing facilities or its emergency plans and operations.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. all persons on the Site or who may be affected by the Work;
  - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole

or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). If Contractor has not restored damaged property within 48 hours of written notice by Owner, or sooner in the case of an emergency, Owner may proceed with restoration of the property, improvements, or facilities deemed necessary. The cost thereof will be deducted from and monies due or which may become due Contractor under the Contract.

- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner of the specific requirements of Contractor's safety program with which Owner's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Owner has issued a written notice to Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.
- K. Owner reserves the right to suspend the Work or any portion thereof if, in its reasonable judgment, Contractor has or is violating the Contract or Task Order or any requirement thereof, including but not limited to violations of Owner's safety programs or any Law or Regulation related to jobsite safety. Contractor shall not receive any adjustment in the Contract Price or Contract Time on the basis of such suspension, even if it is determined that no violation actually existed.

#### 7.14 *Hazard Communication Programs*

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

- B. Contractor shall inform Owner of safety data sheets and hazard communications requirements to further ensure that Owner's employees and representatives are not exposed to hazards associated with any portion of the Project in which Owner's employees and representatives do not have prior specific knowledge.

#### 7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Owner determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.
- B. Contractor shall immediately inform Owner if any condition exists or occurs which has the potential to inflict or cause an environmental health or safety risk to any employee or property of Owner.

#### 7.16 *Submittals*

##### A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
3. With each Shop Drawing or Sample, Contractor shall give Owner specific written notice of any variations that the Submittal may have from the requirements of the

Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Owner for review and approval in accordance with the accepted Schedule of Submittals.

1. Shop Drawings

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Owner the services, materials, and equipment Contractor proposes to provide, and to enable Owner to review the information for the limited purposes required by Paragraph 7.16.C.

2. Samples

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Owner may require to enable Owner to review the Submittal for the limited purposes required by Paragraph 7.16.C.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Owner's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

- C. *Owner's Review of Shop Drawings and Samples*

1. Owner will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Owner's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
3. Owner's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
4. Owner's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Owner has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop



Drawing or Sample. Owner will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Owner's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.

6. Owner's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.

7. Neither Owner's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.

8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Owner and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Owner on previous Submittals.

2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Contractor shall be responsible for Engineer's charges to Owner for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.

3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

*E. Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:

- a. Contractor shall submit all such Submittals to Owner in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
- b. Owner will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned

within the time established in the Schedule of Submittals will be deemed accepted.

- c. Owner's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
- d. If any such Submittal is not accepted, Contractor shall confer with Owner regarding the reason for the non-acceptance, and resubmit an acceptable document.

2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.

- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

#### 7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
  - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
  - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
  - 1. Observations by Owner;
  - 2. Payment by Owner of any progress or final payment;

3. The issuance of a certificate of Substantial Completion by Owner or any payment related thereto by Owner;
  4. Use or occupancy of the Work or any part thereof by Owner;
  5. Any review and approval of a Shop Drawing or Sample submittal;
  6. The issuance of a notice of acceptability by Owner;
  7. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

#### 7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless the Owner-Related Parties from losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by the intentional misconduct or any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable. Nothing herein shall require Contractor to indemnify any Owner-Related Parties for losses, damages, costs or judgments arising out of such party's own negligence.
- B. In any and all claims against an Owner-Related Party by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### 7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will

specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Owner with respect to the Owner-delegated design.

- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Owner, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Owner.
- D. Owner shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Owner's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  - 1. Checking for conformance with the requirements of this Paragraph 7.19;
  - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## **ARTICLE 8—OTHER WORK AT THE SITE**

### **8.01 *Other Work***

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site. The parties acknowledge, however, that the Site is an active work location for Owner and shall remain such for the duration of this Project, and that Contractor shall in no way interfere with or impede Owner's regular business activities.

- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Owner and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Owner in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

## 8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, then Owner shall be responsible for coordinating such entities with work of Contractor.
- B. Owner intends to have coordination meetings among Contractor and such other entities in an effort to manage the overall program associated with the work being performed at the Site. Contractor agrees that it will attend and participate in these logistics meetings and shall cooperate with Owner and such other entities to the

extent reasonably necessary for the performance by such other entities of their work.

### 8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract or Task Order, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
  2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any

such other contractor or utility owner against Contractor or an Owner-Related Party, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner; and (2) indemnify and hold harmless the Owner-Related Party from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

## **ARTICLE 9—OWNER’S RESPONSIBILITIES**

### **9.01 *Communications to Contractor***

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Owner and, if so designated in the Contract Documents, Owner’s Project Representative or Owner’s Consultant.

### **9.02 *Replacement of Engineer***

- A. Owner may at its discretion appoint an engineer to replace Engineer. The replacement engineer’s status under the Contract Documents will be that of the former Engineer.

### **9.03 *Furnish Data***

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

### **9.04 *Pay When Due***

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

### **9.05 *Lands and Easements; Reports, Tests, and Drawings***

- A. Owner’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner’s duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

### **9.06 *Insurance***

- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

### **9.07 *Change Orders***

- A. Owner’s responsibilities with respect to Change Orders are set forth in Article 11.

### 9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

### 9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

### 9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

### 9.11 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

### 9.12 *Other Responsibilities*

- A. The foregoing Paragraphs 9.01 through 9.11 shall not be construed to limit the other responsibilities of Owner set forth in these General Conditions.

## **ARTICLE 10— OWNER'S ROLE AND RIGHTS DURING CONSTRUCTION**

### 10.01 *General*

- A. This Article 10 generally establishes Owner's role and rights during construction, with the understanding that such role and rights are inclusive of other roles and rights that are set forth elsewhere in these General Conditions and other Contract Documents.
- B. Owner shall have the right to stop work whenever, in its sole discretion, Owner determines that such action is needed to prevent improper execution of the Work or to otherwise project Owner's interests.

### 10.02 *Owner's Representative*

- A. Owner may furnish a Project Representative to assist Owner in providing more extensive observation of the Work or fulfill other responsibilities of Owner. If Owner elects to furnish a Project Representative, then Owner will notify Contractor in writing of the identity, authority and responsibilities of any such Project Representative.



### 10.03 *Clarifications and Interpretations*

- A. Owner will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as Owner may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations shall be binding on Contractor. If Contractor disagrees with such clarifications and interpretations, or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, it may pursue its rights to submit a Claim in accordance with Article 12 hereof.

### 10.04 *Authorized Variations in Work*

- A. Owner may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and shall be binding on the Contractor, who shall perform the Work involved promptly. If the Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of such adjustment, it may pursue its rights to submit a Claim in accordance with Article 12 hereof.

### 10.05 *Rejecting Defective Work*

- A. Owner shall have authority to disapprove or reject Work which Owner believes to be defective, or that Owner believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner shall also have authority to require special inspection or testing of the Work as provided in Paragraph 14.4, whether or not the Work is fabricated, installed, or completed.

### 10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Owner will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work.

### 10.07 *Limitations on Owner's Responsibilities*

- A. Owner will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- B. Owner will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- C. Owner's review of the final Application for Payment for a Task Order and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- D. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Project Representative and Owner's Consultant, if any.

## **ARTICLE 11—CHANGES TO THE CONTRACT**

### *11.01 Amending and Supplementing the Contract*

- A. The Contract or any Task Order may be amended or supplemented by a Change Order, a Work Change Directive, a Field Order, or a written amendment signed by Owner and Contractor.
- B. If an amendment or supplement to the Contract or any Task Order includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract or any Task Order must be approved by the Owner.

### *11.02 Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
  - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14; or (c) otherwise agreed upon in writing by the parties to be a change in the Work; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.

- B. If Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.
- C. Contractor agrees that duly executed Change Orders will constitute full resolution of all Contractor's rights arising out of or related to the subject matter of the Change Order, including but not limited to time extensions, delays, disruption and cumulative impact.

#### 11.03 *Work Change Directives*

- A. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.

#### 11.04 *Field Orders*

- A. Owner may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Contractor, which shall perform the Work involved promptly, unless the provisions of Paragraph B below are applicable.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then it shall, before proceeding with the Work, provide written notice to Owner of such position within three (3) days of its receipt of the Field Order. Contractor shall not proceed with the Work until directed by Owner. If directed by Owner to proceed with the work, Contractor shall submit a Change Proposal within (ten) days of its receipt of the directive. Contractor's failure to provide the 3-day written notice set forth above shall constitute a waiver of Contractor's right to seek an adjustment in the Contract Price or Contract Times for the Field Order.

#### 11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the

case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.

- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

#### 11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
  - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
  - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
  - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. ~~Contractor's Fee: When applicable, The Contractor's fee for overhead and profit will be included in the Coefficient Multiplier, which shall be applied to the value of 11.07.B, whatever method is used. determined as follows:~~
  - 1. ~~A mutually acceptable fixed fee; or~~
  - 2. ~~If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:~~
    - a. ~~For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;~~
    - b. ~~For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;~~

- ~~c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually per 13.01.B1 and 13.01.B2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;~~
- ~~d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;~~
- ~~e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and~~
- ~~f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive. [Addendum No. 2]~~

#### 11.08 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 Change Proposals

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Owner to request an adjustment in the Contract Times or Contract Price; challenge a set-off against payment due or any other position taken by Owner; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of

the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

**B. Change Proposal Procedures**

1. *Submittal*: Contractor shall submit each Change Proposal to Owner within 30 days after the start of the event giving rise thereto, or after such initial decision.

2. *Supporting Data*: The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to Owner within 15 days after the submittal of the Change Proposal.

a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.

b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Owner's Initial Review*: If in its discretion Owner concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Owner may request that Contractor submit such additional supporting data by a date specified, prior to Owner beginning its full review of the Change Proposal.

4. *Owner's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Owner), Owner will conduct a full review of each Change Proposal and either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing and provided to Contractor. If Owner does not take action on the Change Proposal within 60 days, then Contractor may at any time thereafter submit a letter to Owner indicating that as a result of Owner's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Owner's decision is final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.

**11.10 Notification to Surety**

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

**ARTICLE 12—CLAIMS****12.01 Claims**

- A. *Claims Process*: In the event Contractor appeals any Owner decision regarding Change Proposals, the provisions in this article shall govern the appeal.
- B. *Submittal of Claim*: Contractor shall deliver a Claim to Owner promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 21 days of the decision under appeal. The responsibility to substantiate a Claim rests with Contractor. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: Owner shall review a Claim thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party.
- D. *Partial Approval*: If Owner approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action Contractor invokes the procedure set forth in Article 17 for final resolution of disputes.
- E. *Denial of Claim*: If efforts to resolve a Claim are not successful, Owner may deny it by giving written notice of denial to Contractor. If Owner does not take action on the Claim within 30 days, then as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial Contractor invokes the procedure set forth in Article 17 for the final resolution of disputes.
- F. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

**ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK****13.01 Lump Sum Work ~~Cost of the Work~~**

- A. **For lump sum work, Task Order Contract Price shall be the value of the approved Task Order Price Proposal.**
  - 1. The value of the Task Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Task (unit price x quantity x Coefficient Multiplier) plus the value of all Non Pre-priced Tasks.**

**2. The Contractor will prepare Task Order Price Proposals in accordance with the following:**

- a. Pre-priced Task: A task described in, and for which a unit price is set forth in, the Price Catalog. The Bare Total Unit Price shall be used in the Price Catalog.**
- b. Non Pre-priced Task: A task that is not set forth in the Price Catalog.**

**3. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:**

- a. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.**
- b. If the Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Price Catalog. If the work is to be subcontracted, the Contractor must submit three independent quotes from subcontractors. The Contractor shall not submit a quote or bid from any supplier or subcontractor that the Contractor is not prepared to use. The Owner may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable.**

**4. The Owner's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.**

~~*Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:~~

- ~~1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost plus fee, time and materials, or other cost based terms; or~~
- ~~2. When needed to determine the value of a Change Order, Change Proposal, Claim, set off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.~~

~~*B. Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:~~

- ~~1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, foremen, safety representatives, and other personnel (other than any personnel of a position higher than a foreman) employed full time on the~~



~~Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.~~

~~2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.~~

~~3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.~~

~~4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed or retained for services specifically related to the Work.~~

~~5. Other costs consisting of the following:~~

~~a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.~~

~~b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.~~

~~1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.~~

~~c. Construction Equipment Rental~~

- ~~1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.~~
  - ~~2) Costs for the use, operating, maintenance, fuel, storage and other costs of all equipment and machinery owned by Contractor or a Contractor-related entity will be paid at the rates established by the most recent version of the Rental Rate Blue Book published by Nielsen/DATAQUEST, Inc. of Palo Alto, California, or its successors. The rental rates to be used shall be the published monthly rate divided by 176 to yield an hourly rate, which hourly rate shall be further adjusted by multiplying it by the Rental Rate Blue Book adjustment rate for the year the equipment was manufactured and by the regional factor contained in the Rental Rate Blue Book estimated hourly operating cost rate.~~
  - ~~3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.~~
- ~~d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.~~
- ~~e. Deposits lost for causes other than negligence or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.~~
- ~~f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses~~

~~will be included in the Cost of the Work for the purpose of determining Contractor's fee.~~

- ~~g. The cost of utilities, fuel, and sanitary facilities at the Site.~~
- ~~h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.~~
- ~~i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.~~

~~C. Costs Excluded: The term Cost of the Work does not include any of the following items:~~

- ~~1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, personnel above the position of foreman, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.~~
- ~~2. The cost of purchasing, renting, or furnishing small tools and hand tools.~~
- ~~3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.~~
- ~~4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.~~
- ~~5. Costs due to the negligence or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.~~
- ~~6. Expenses incurred in preparing and advancing Claims.~~
- ~~7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.~~

~~D. Contractor's Fee~~

- ~~1. When the Work as a whole is performed on the basis of cost plus a fee, then:
  - ~~a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.~~~~

- ~~b. for any Work covered by a Change Order, Change Proposal, Claim, set off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:~~
- ~~1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.~~
  - ~~2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.~~
- ~~2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost plus a fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.~~
- E. ~~Documentation and Audit: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work **Task Order Proposal** and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor. [Addendum No. 2]~~

### 13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner.
- B. *Cash Allowances:* Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
  2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs. The Owner's contingency allowance, if any, shall not be included in the Contract Price.

- D. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

### 13.03 Unit Price Work

- A. Where the ~~Contract Documents~~ **Task Order** provides that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement **times the Coefficient Multiplier**. [Addendum No. 2]
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of ~~comparison of Bids and~~ determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities. [Addendum No. 2]
- C. Each unit price will be based on the Price Catalog as described in Paragraph 5.02 of the Agreement. **Reference Paragraph 13.01.3 for Non Pre-priced Task pricing**. [Addendum No. 2]
- D. Owner will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Owner will review with Contractor Owner's preliminary determinations on such matters before rendering a written decision thereon. Owner's written decision thereon will be final and binding, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
    - a. the quantity of the item of Unit Price Work performed by Contractor is more than 25% higher or lower than the estimated quantity of such item indicated in the Agreement; and
    - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
  2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
  3. Adjusted unit prices will apply to all units of that item.

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

### 14.01 Access to Work

- A. Owner, its consultants and other representatives and personnel, independent testing laboratories, and authorities having jurisdiction have access to the Site and

the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

#### 14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Owner timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any Governmental Unit having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such Governmental Unit, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
  1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
  2. to attain Owner's acceptance of materials or equipment to be incorporated in the Work;
  3. by manufacturers of equipment furnished under the Contract Documents;
  4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
  5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner.
- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner, Contractor shall, if requested by Owner, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Owner timely notice of Contractor's intention to cover the same and Owner had not acted with reasonable promptness in response to such notice.

### 14.03 Defective Work

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Owner's Rights:* Owner has the right to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner has actual knowledge will be given to Contractor.
- D. *Remedying Defective Work:* Contractor will start the process of remedying defective Work within five (5) days of Owner's notice of such defective Work. If Contractor does not effectuate such remedy within fourteen (14) days of Owner's notice, then Owner shall have the right to perform directly, or have performed by third parties, the necessary remedy, and the costs thereof shall be borne by Contractor. If the parties agree that the remedy will take longer than the 14-day period set forth above, they may mutually agree to modify the remedy period.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by Governmental Units because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment under a Task Order, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

### 14.04 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work, and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

#### 14.05 *Uncovering Work*

- A. Owner has the right to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Owner, then Contractor shall, if requested by Owner, uncover such Work for Owner's observation, and then replace the covering, all at Contractor's expense.
- C. If Owner considers it necessary or advisable that covered Work be observed by Owner or inspected or tested by others, then Contractor, at Owner's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Owner may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
  - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
  - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

#### 14.06 *Owner May Stop the Work*

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

#### 14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Owner to correct defective Work, or to remove and replace defective Work as required by Owner, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid



Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, and Owner's other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

## **ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD**

### **15.01 *Progress Payments***

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Owner. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
  - 1. Contractor shall submit to Owner by the 25<sup>th</sup> day of the month an Application for Payment filled out and signed by Contractor covering the Work completed through the last day of the previous month, and accompanied by such supporting documentation as is required by the Contract Documents.
  - 2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
  - 3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  - 4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

### C. *Review of Applications*

1. Owner will, within 15 days after receipt of each Application for Payment, including each resubmittal, either notify Contractor in writing that Application for Payment has been approved or disapproved, in whole or in part, and the reasons for the disapproval.
2. By approving an Application for Payment, Owner will have relied upon the representations of Contractor that:
  - a. the Work has progressed to the point indicated;
  - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
  - c. the conditions precedent to Contractor's being entitled to such payment have been fulfilled.
3. In reviewing and acting upon Applications for Payment, Owner shall not be deemed to have represented that the inspections it has made (if any) to check the quality or the quantity of the Work as it has been performed have been exhaustive, or extended to every aspect of the Work in progress.
4. Owner may refuse to approve the whole or any part of any Application for Payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, may revise or revoke any payment approval previously made, as Owner may believe necessary, in its sole discretion, to protect itself from loss because:
  - a. the Work is defective, requiring correction or replacement;
  - b. the Contract Price has been reduced by Change Orders;
  - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
  - e. Owner has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

### D. *Payment Becomes Due*

1. Fifteen (15) days after Owner's approval of an Application of Payment, the amount approved (subject to the provisions of Paragraph 15.01.E below, will be paid by Owner to Contractor.

E. *Reductions in Payment by Owner*

1. Owner is entitled to impose a set-off against payment based on any of the following:
  - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
  - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
  - c. Contractor has failed to provide and maintain required bonds or insurance;
  - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
  - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
  - f. The Work is defective, requiring correction or replacement;
  - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
  - h. The Contract Price has been reduced by Change Orders;
  - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
  - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
  - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, Owner will give Contractor written notice stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

#### 15.02 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract or any particular Task Order will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

#### 15.03 Substantial Completion

- A. When Contractor considers the entire Work under a Task Order ready for its intended use Contractor shall notify Owner in writing that the entire Work is substantially complete and request that Owner issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner and Contractor, shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Contractor in writing giving the reasons therefor.
- C. If Owner considers the Work substantially complete, Owner will prepare and deliver to Contractor a certificate of Substantial Completion which will fix the date of Substantial Completion for such Task Order. There shall be attached to the certificate a punch list of items to be completed or corrected before final payment under such Task Order. If Owner determines that the Work is not substantially complete, it shall so notify Contractor in writing, stating the reasons therefor.
- D. Prior to Owner issuing the certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

#### 15.04 Partial Use or Occupancy

- A. Prior to Substantial Completion of all the Work under a Task Order, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor and Owner will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
  2. At any time, Contractor may notify Owner in writing that Contractor considers any such part of the Work substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work.
  3. Within a reasonable time after either such request, Owner and Contractor shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Contractor in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
  4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

#### 15.05 Final Inspection

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Owner will promptly make a final inspection with Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 15.06 Final Payment

##### A. Application for Payment

1. After Contractor has, in the opinion of Owner, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment under a Task Order.
2. The final Application for Payment must be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents or Task Order;
  - b. consent of the surety, if any, to final payment;
  - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
  - d. a list of all duly pending Change Proposals and Claims;
  - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work; and
  - f. a general release executed by Contractor waiving, upon receipt of final payment by Contractor, all Claims and other rights arising out of or related to the Contract, except those Claims specifically identified and listed in the general release that remain unsettled at the time of final payment, which Claims shall have been previously made in writing in accordance with this Contract, or which may be made in accordance with the terms of the Virginia Public Procurement Act.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. *Owner's Review of Final Application and Approval of Payment:* If Owner is satisfied that the Work under a Task Order has been completed and Contractor's other obligations under the Contract have been fulfilled, Owner will, within 10 days after receipt of the final Application for Payment, approve such Application for Payment. Such approval will account for any set-offs against payment that are necessary in Owner's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. If Owner does not approve the Application for Payment, Owner will notify Contractor in writing the reasons for its disapproval, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Owner's approval of final payment pursuant to Paragraph B above.
- D. *Final Payment Becomes Due:* Owner shall set off against the amount approved for final payment under a Task Order any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed

under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's approval of the final Application for Payment.

#### *15.07 Waiver of Claims*

- A. The acceptance of final payment under a Task Order by Contractor will constitute a waiver by Contractor of all claims and rights against Owner with respect to such Task Order, other than those specifically set forth in the general release required by Paragraph 15.06.A.2(f), which Claims shall have been previously made in writing in accordance with this Contract, or which may be made in accordance with the terms of the Virginia Public Procurement Act.

#### *15.08 Correction Period*

- A. If within one year after the date of Substantial Completion under a Task Order (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
  - 1. correct the defective repairs to the Site or such adjacent areas;
  - 2. correct such defective Work;
  - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
  - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.

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

#### *15.09 Contractor Payments to Subcontractors*

- A. Contractor shall be liable for the entire amount owed to any Subcontractor with which it contracts. Contractor shall not be liable for amounts otherwise reducible due to the Subcontractor's noncompliance with the terms of their contract. However, in the event that the Contractor withholds all or a part of the amount promised to the Subcontractor under their contract, the Contractor shall notify the Subcontractor, in writing, of its intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment. Payment by the Owner shall not be a condition precedent to Contractor's payment to any Subcontractor of any tier, regardless of Contractor receiving payment for amounts owed to Contractor. Any provision in any of the Contract Documents contrary to this Paragraph 15.09.A shall be unenforceable.
- B. Within seven (7) days after receipt of amounts paid by Owner to Contractor, Contractor shall take one (1) of the following two (2) actions with regard to Work performed by a Subcontractor:
  - 1. Pay Subcontractor for the proportionate share of the total payment received from Owner attributable to the Work performed by Subcontractor under the Contract; or
  - 2. Notify Owner and Subcontractor, in writing, of Contractor's intention to withhold all or a part of Subcontractor's payment with the reason for nonpayment.
- C. Individual Contractors and Subcontractors shall provide their social security numbers and Contractors organized as proprietorships, partnerships or corporations shall provide their federal employer identification numbers to Owner prior to the start of Work under this Contract.
- D. Contractor shall pay interest to Subcontractors on all amounts owed by Contractor that remain unpaid after seven (7) days following receipt by Contractor of payment from Owner for Work performed by Subcontractor under this Contract, except for amounts withheld as allowed in Paragraph.



- E. Unless otherwise provided under the terms of this Contract, interest on undisputed portion of unpaid invoices from Subcontractors shall accrue at the rate of one percent (1%) per month.
- F. 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 with respect to each lower tier Subcontractor as set forth in this Paragraph.

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

### *16.01 Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work. Notwithstanding the above, if Owner suspends Work or any portion thereof due to its reasonable judgment that Contractor has or is violating the Contract or any requirement thereof, including but not limited to violations of Owner's safety programs or any Law or Regulation related to jobsite safety, then Contractor shall not receive any adjustment in the Contract Price or extension of the Contract Times, even if it is determined that no violation actually existed.

### *16.02 Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause of the Contract or any Task Order:
  - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
  - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
  - 3. Contractor's disregard of Laws or Regulations of any Governmental Unit having jurisdiction; or
  - 4. Contractor's repeated disregard of the authority of Owner, Project Representative and/or Owner's Consultant.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract or any Task Order, Owner may proceed to:
  - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract or any Task Order is terminated; and

2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract or any Task Order for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
  - D. Owner may not proceed with termination of the Contract or any Task Order under Paragraph 16.02.B if Contractor within 7 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
  - E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work under the Contract or Task Order is completed. If the unpaid balance of the Contract Price related to Work completed by the Contractor but unpaid as of the time of termination exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
  - F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
  - G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

### 16.03 Owner May Terminate for Convenience

- A. Upon 7 days' written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract or any Task Order. In such case, Contractor shall be paid for (without duplication of any items):
  1. completed and acceptable Work under the Contract or Task Order being terminated, executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work under the Contract or Task Order

being terminated, plus fair and reasonable sums for overhead and profit on such expenses; and

3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

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

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of any Governmental Unit, or (2) Owner fails for 90 days to pay Contractor any undisputed sums due under this Contract or any Task Order, then Contractor may, upon 7 days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Contract or such Task Order and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract or such Task Order and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Contractor any sum undisputed sums due under this Contract or such Task Order, Contractor may, 7 days after written notice to Owner, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

### **ARTICLE 17—FINAL RESOLUTION OF DISPUTES**

#### 17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.

The party seeking to invoke these Article 17 processes shall provide written notice of the disputed matter to the other party in a "Notice of Request for Dispute Resolution" for which it wishes to use these Article 17 processes. The Notice of Request for Dispute Resolution shall identify the substance and basis for the disputed matter, along with the amount disputed, if any. The party receiving the Notice of Request for Dispute Resolution shall respond in writing within ten business days by setting forth that party's position with respect to the disputed matter raised in the Notice of Request for Dispute Resolution.

- B. *Voluntary Mediation*: If the parties mutually agree to use voluntary mediation for any disputed matter, the mediation proceeding shall be conducted by a single, impartial mediator appointed by and under the rules of The McCammon Mediation Group. The parties shall split the hourly fees of the mediator 50/50, and each shall bear its respective legal fees and other costs. The mediation will take place at the Tysons Corner, Virginia offices of McGuireWoods, LLP, unless the parties agree otherwise. If they elect to seek mediation, each party shall participate in good faith in such mediation as a strict condition precedent to such party instituting any litigation authorized below. All communications and submissions concerning and during the mediation will be strictly confidential and inadmissible in any court proceeding.
- C. *Litigation*: Any and all disputed matters which are unresolved following voluntary mediation, if pursued, shall be resolved exclusively by litigation in either the Circuit Court of the City of Alexandria, Virginia or the United States District Court for the Eastern District of Virginia. These two courts shall have exclusive and binding jurisdiction and venue over any and all disputes arising under the Contract. THE PARTIES VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY. THE FACT FINDER SHALL BE THE COURT SITTING WITHOUT A JURY.
1. If the disputed matter involves Contractor's Claim for costs or damages due to Owner's alleged delaying or disrupting Contractor in the performance of its Work under the Contract, Contractor shall be liable to Owner and shall pay it for a percentage of all costs incurred by Owner in investigating, analyzing, negotiating, and litigating the Claim, which percentage shall be equal to the percentage of Contractor's total delay and disruption claim that is determined through litigation to be false or to have no basis in law or in fact.
  2. If Owner has denied Contractor's Claim for costs or damages due to Owner's alleged delaying or disrupting Contractor in the performance of Work under the Contract, Owner shall be liable to and shall pay such Contractor a percentage of all costs incurred by the Contractor in investigating, analyzing, negotiating, and litigating the Claim, which shall be equal to the percentage of Contractor's total delay and disruption claim for which the Owner's denial is determined through litigation to have no basis or have been made in bad faith.

## ARTICLE 18—MISCELLANEOUS

### 18.01 Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to Owner or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### 18.02 *Computation of Times*

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

### 18.03 *Cumulative Remedies*

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

### 18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor any other Owner-Related Party shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

### 18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

### 18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

### 18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the Commonwealth of Virginia.

### 18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

### 18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

### 18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

### 18.11 *Independent Contractor*

- A. The relationship of Contractor to Owner shall be that of an independent contractor.

### 18.12 *Liens*

- A. The Site is owned by Owner, which is a public entity and, as such, cannot be subjected to a mechanics' lien. Contractor, on its own behalf and on behalf of its Subcontractors, hereby agrees not to permit any liens of any nature whatsoever, including but not limited to mechanics liens to be placed on the Site. In the event that a lien is placed on the Site, upon ten (10) days' notice so to do, Contractor will remove the lien, and if necessary will secure a bond to cover the amount of the lien. The payment bond shall be the sole and exclusive remedy for Subcontractors and Suppliers for nonpayment hereunder.

### 18.13 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

END OF SECTION