



**FORMAL INVITATION FOR BID**

*Purchasing Administration Office  
Municipal Building - First Floor  
300 South Main Street  
Blacksburg, Virginia 24060  
Angie Frazier, Purchasing Manager  
(540) 443-1076  
[afrazier@blacksburg.gov](mailto:afrazier@blacksburg.gov)*

<b>ISSUE DATE:</b> October 11, 2024	<b>BID NUMBER:</b> IFB 1192-24  <b>BID TITLE:</b> Transit Bus Pull Off
<b>BID OPENING DATE, TIME AND LOCATION:</b> November 19, 2024 1:00pm Town of Blacksburg Blacksburg Municipal Building Purchasing Administration Office First Floor 300 South Main Street Blacksburg, VA 24060  <i>Bids must be received by the Town of Blacksburg Purchasing Agent at the Purchasing Administration Office, First Floor, Blacksburg Municipal Building, 300 South Main Street, Blacksburg, Virginia 24060 by the above opening date and time. By using a commercial delivery service to deliver a bid, bidder assumes the responsibility for any failure by the delivery service to deliver the bid on time or to the correct office or bid opening location.</i>	
<b>LAST DATE FOR WRITTEN QUESTIONS:</b> October 29, 2024 by 5:00pm  <i>Email questions to:</i> Angie Frazier <a href="mailto:afrazier@blacksburg.gov">afrazier@blacksburg.gov</a>  <b>DATE ADDENDA WILL BE POSTED ON THE TOWN’S WEBSITE:</b> November 1, 2024	
<b>FINAL COMPLETION TIME:</b>  16 Weeks From Notice to Proceed	<b>BID BOND REQUIRED:</b>  5%

## Table of Contents

- I. Notice to Bidders / Advertisement for Bid
- II. Instructions to Bidders
  - 1. The Invitation for Bid
  - 2. Conditions at Site or Structure
  - 3. Explanations to Bidders/Addenda
  - 4. Preparation and Submission of Bids
  - 5. Bid Guarantee
  - 6. Receipt of Bids
  - 7. Opening of Bids
  - 8. Errors in Bids
  - 9. Rejection of Bids
  - 10. Determination of Responsibility
  - 11. Award of Contract
  - 12. Award Protest
  - 13. Contract Security
  - 14. Certification
  - 15. Ethics in Public Contracting
  - 16. Minority Utilization
  - 17. Bid Documents
  - 18. Pre-Bid Conference
  - 19. Progress Schedule
  - 20. Audit
  - 21. Conditional Bids
  - 22. Acceptance of Bids
  - 23. Proprietary Information or Trade Secrets
  - 24. Pricing Errors
  - 25. Quantities
  - 26. Anti-Trust
  - 27. Tie Bidding
  - 28. License Requirement
  - 29. Applicable Laws and Courts
  - 30. Material Safety Data Sheets
  - 31. Bidder's Responsibility
  - 32. Default
  - 33. Valid Contract
  - 34. Debarment Status
  - 35. Drug Free Workplace
  - 36. Compliance with State Law; Foreign and Domestic Businesses Authorized to Transact Business in Virginia
  - 37. Indemnification

- III. Forms
  - Bid Form
  - Performance Bond
  - Labor and Material Payment Bond
  - Notice of Award
  - Certificate of Completion
  - Partial Completion
  - Workers' Compensation
  - Sample Contract
  - Schedule of Values
  - Change Order
  - Contractor's Qualifications

IV. General Conditions

A. Definitions

B. Terms and Conditions

1. Contract Documents
2. Laws and Regulations
3. Nondiscrimination
4. Prohibition of Alcohol and Other Drugs
5. Time for Completion
6. Conditions at Site
7. Contract Security
8. Subcontracts
9. Separate Contracts
10. Contractor's and Subcontractor's Insurance
11. Builder's Risk Insurance
12. Taxes, Fees, Assessments
13. Patents
14. Engineer's Status
15. Inspection
16. Superintendence by Contractor
17. Construction Supervision, Methods and Procedures
18. Schedule of the Work
19. Schedule of Values and Certificate for Payment
20. Access to Work
21. Surveys and Layout
22. Plans and Specifications
23. Submittals
24. Fees, Services and Facilities
25. Equals
26. Availability of Materials
27. Contractor's Title to Materials
28. Standards for Materials Installation and Workmanship
29. Warranty of Materials and Workmanship
30. Use of Site and Removal of Debris
31. Temporary Roads

32. Signs
33. Protection of Persons and Property
34. Climatic Conditions
35. Payments to Contractor
36. Payments by Contractor
37. Changes in the Work
38. Extras
39. Contractor's Right to Stop Work or Terminate the Contract
40. Owner's Right to Terminate Contract for Cause
41. Termination by Owner for Convenience
42. Damages for Delays; Extension of Time
43. Inspection for Substantial and Final Completion
44. Guarantee of Work
45. Assignments
46. Contractual Disputes
47. Asbestos
48. Training, Operation and Maintenance of Equipment
49. Project Meetings

V. Federal Transit Administration Terms and Conditions

VI. Supplemental Conditions

VII. Specifications / Scope of Work

**I. NOTICE TO BIDDERS**  
**Town of Blacksburg, Virginia**  
**Invitation for Bid 1192-24**

The Town of Blacksburg, Virginia is requesting sealed bids for Transit Bus Pull Off. The bid package is available on the Town's website, [www.blacksburg.gov](http://www.blacksburg.gov).

The Town of Blacksburg encourages participation from businesses certified as small businesses, women owned businesses, minority owned businesses, service disabled veteran owned businesses and disadvantaged owned businesses.

An Equal Opportunity Employer

Town of Blacksburg  
Purchasing Administration Office  
Municipal Building  
First Floor  
300 South Main Street  
Blacksburg, Virginia 24060

Angie Frazier, CPPO, CPPB, VCO  
Purchasing Manager  
[afrazier@blacksburg.gov](mailto:afrazier@blacksburg.gov)  
p. (540) 443-1076  
f. (540) 961-1514

## II. INSTRUCTIONS TO BIDDERS

1. **THE INVITATION FOR BID (IFB):** Consists of the Notice, this Instructions To Bidders, the Bid Form, definitions, the General Conditions of the Construction Contract, the Supplemental General Conditions (if any), the Special Conditions (if any), the Forms to be used, and the Scope of Work as described by the Plans and Specifications, other documents listed in the Specifications, and any addenda which may be issued, all of which request qualified bidders to submit competitive prices or bids for providing the described work on the project.
2. **CONDITIONS AT SITE OR STRUCTURE:** Bidders shall visit the site and shall be responsible for ascertaining pertinent local conditions such as location, accessibility, general character of the site or building, and the character and extent of existing work within or adjacent to the site. Claims, as a result of failure to have done so, will not be considered by the Owner.
3. **EXPLANATIONS TO BIDDERS/ADDENDA:** No oral explanation in regard to the meaning of drawings and specifications will be made and no oral instructions will be given before the award of the contract. Discrepancies, omissions or doubts as to the meaning of drawings and specifications shall be communicated in writing to the Owner's Purchasing Agent for interpretation. Any interpretation made will be in the form of an addendum to the specifications which will be posted on the Town's web site, and its receipt shall be acknowledged by the bidder on Bid Forms. Questions must be submitted by email to the Purchasing Agent, Angie Frazier, at [afrazier@blacksburg.gov](mailto:afrazier@blacksburg.gov), by 5:00pm on October 29, 2024. Addenda will be posted on the Town's web site on November 1, 2024.
4. **PREPARATION AND SUBMISSION OF BIDS:** Bids shall be submitted on the forms furnished, or copies thereof, and shall be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures, alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the Owner as being incomplete or nonresponsive. Bids must be submitted in a sealed envelope. The Bidder shall clearly mark on the outside of the envelope, SEALED BID, include the bid number and subject, bid opening date and time, and the bidder's complete mailing address, and Contractor's State License Number, Class of License and Expiration Date.
  - a. Each bid must give the complete legal name and full business address of the bidder and be signed by the bidder, or the bidder's authorized representative, with his usual signature. Bids by partnerships must be signed in the partnership name by one of the general partners of the partnership or an authorized representative, followed by the designation/title of the person signing, and a list of the partners. Bids by corporations must be signed with the legal name of the corporation followed by the name of the state in which it is incorporated and by the signature and title of the person authorized to bind it in this matter. The name of each person signing shall be typed or printed below the signature. A signature on a bid by a person who identifies his title as 'President,' 'Secretary,' 'Agent' or other designation without disclosing the principal firm, shall be held to be the bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished. Trade or fictitious names may be referenced by using "t/a \_\_\_," but bids shall be in the legal name of the person or entity submitting the bid.

b. Bids with the bid guarantee shall be enclosed in a sealed envelope, which shall be marked and addressed as indicated by the advertisement. If a contract is for one hundred twenty thousand dollars (\$120,000) or more, or if the total value of all construction, removal, repair or improvements undertaken by the bidder within any twelve-month period is seven hundred fifty thousand dollars (\$750,000) or more, the bidder is required under Title 54. 1, Chapter II, Code of Virginia, as amended, to be licensed in Virginia as a "Class A Contractor." If a contract is for seven thousand five hundred dollars (\$7,500) or more, but less than one hundred twenty thousand dollars (\$120,000), the bidder is required to be licensed in Virginia as a "Class B Contractor." "Class C contractors" perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500, or (ii) the total value of all such construction, removal, repair, or improvements undertaken by such person within any 12-month period is less than \$150,000. The bidder shall place on the outside of the envelope containing the bid and shall place in the bid over his signature whichever of the following notations is appropriate and insert his Contractor license/registration number:

Licensed Class A Virginia Contractor No. \_\_\_\_\_  
or  
Licensed Class B Virginia Contractor No. \_\_\_\_\_

- c. If the bidder fails to provide this information on his bid or on the envelope containing the bid and fails to promptly provide said Contractor license number to the Owner in writing when requested to do so before or after the opening of bids, he shall be deemed to be in violation of Section 54.1-1112 of the Code of Virginia, as amended, and his bid will not be considered.
- d. The Board for Contractors has interpreted its regulations to mean "a licensed Contractor can bid on a contract which contains work outside his license classification(s) as long as he subcontracts those items for which he is not qualified to licensed to contractors with the appropriate License Classification and the work of the second party is incidental to the contract" Therefore, the Owner may, as a part of determining whether the bidder is "responsible," require the apparent low bidder to submit a listing of his subcontractors along with the license number and classification or specialty of each.
- e. The bidder must also place its Employer Identification Number (SSN or FEIN) in the space provided on the Bid Form.
- f. S.C.C. Licensing: A bidder must be registered and licensed with the State Corporation Commission of Virginia in order to perform work in Virginia as a corporation.
- g. The Town will not be responsible for premature opening or late arrival of bids improperly addressed or identified. If a bid is mailed in an envelope, not as specified, the Bidder takes the risk that the envelope may be inadvertently opened and the information compromised which may cause the bid to be disqualified. The Town reserves the right to declare such a bid as non-responsive. Sealed bids may be hand delivered to the designated location.

**5. BID GUARANTEE:** Any bid which exceeds one hundred thousand dollars (\$100,000) shall be accompanied by a Bid Bond payable to the Owner as obligee in an amount equal to five percent (5%) of the amount of the bid. A Bid Bond may be required for projects having bids of less than one hundred thousand dollars (\$100,000) if such requirement is stated in the Notice of Invitation for Bids. The Bid Bond must be issued by a surety company which is legally authorized by the Virginia State Corporation Commission to do fidelity and surety business in the Commonwealth of Virginia. Such Bid Bond shall guarantee that the bidder

will not withdraw his bid during the period of thirty (30) days following the opening of bids; that if his bid is accepted, he will enter into a formal contract with the Owner in accordance with the Contract Between Owner and Contractor, , included as a part of the IFB Documents; that he will submit a properly executed and authorized Standard Performance Bond and Standard Labor and Material Payment Bond on the forms included in the IFB documents; and that in the event of the withdrawal of said bid within said period, or failure to enter into said contract and give said bonds within ten (10) days after he has received notice of acceptance of his bid, the bidder shall be liable to the Owner for the difference between the amount specified in said bid and such larger amount for which the Owner may contract with another party to perform the work covered by said bid, up to the amount of the bid guarantee. This amount represents the damage to the Owner on account of the default of the bidder in any particular hereof. See § 2.2-4336 of the Code of Virginia, as amended.

- a. The Bid Bonds or other bid security will be returned to the bidders after the Owner and the accepted bidder have executed the Contract and the Performance Bond and the Payment Bond have been approved by the Owner.
- b. If the required Contract and bonds have not been executed within thirty (30) days after the date of the opening of the bids, then the bond or other bid security of any bidder will be returned upon his request, provided he has not been notified of the acceptance of his bid prior to the date of such request

**6. RECEIPT OF BIDS:** Bids will be received at or before the date and the hour and at the place stipulated in the Invitation for Bids as may be modified by subsequent Addenda.

- a. It is the responsibility of the bidder to assure that his bid and any bid modifications are delivered to the place designated for receipt of bids by the date and hour (deadline) set for receipt of bids. No bids or bid modifications submitted or offered after the date and hour designated for receipt of bids will be accepted or considered.
- b. The Purchasing Agent is the Owner's representative designated to receive bids at the time and place noted in the IFB and to open the bids received at the appointed time.
- c. The official time used for the receipt of responses is determined by reference to the clock designated by the Purchasing Agent. The Purchasing Agent shall determine when the Bid Receipt Deadline has arrived and shall announce that the Deadline has arrived and that no further bids or bid modifications will be accepted. All bids and bid modifications in the possession of the Purchasing Agent and his assistants at the time the announcement is completed are deemed to be timely, whether or not the bid envelope has been physically date/time stamped or otherwise marked by the time the Purchasing Agent makes the deadline announcement.

**7. OPENING OF BIDS:** Bids will be opened at the time and place stated in the Invitation for Bids or as modified by subsequent Addenda, and their contents publicly announced. The Bid Officer shall decide when the specified time for bid opening has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.

**8. ERRORS IN BIDS:** A bidder may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made



directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

- a. The Bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure. Original work papers must be submitted with the notice.
- b. No bid may be withdrawn under this section when the result would be the awarding of the Contract on another bid of the same Bidder or of another Bidder in which the ownership of the withdrawing Bidder is more than five percent.
- c. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
- d. Failure of a bidder to submit his original work papers, documents and materials used in the preparation of his bid on or before the time, date and place required shall constitute a waiver by that bidder of his right to withdraw his bid due to a mistake.
- e. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the Contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted. The person or firm to whom the Contract was awarded and the withdrawing bidder are jointly liable to the Owner in an amount equal to any compensation paid to or for the benefit of the withdrawing bidder without such approval.

**9. REJECTION OF BIDS:** The Owner reserves the right to cancel the Invitation for Bids, to reject any and all bids at its sole discretion when such rejection is in the interest of the Owner, or to reject the bid of any bidder who is determined to be not responsive or not responsible.

**10. DETERMINATION OF RESPONSIBILITY:** Each bidder shall be prepared, if so requested by the Owner, to present evidence of his experience, qualifications and financial ability to carry out the terms of the Contract.

- a. Prior to award of the Contract, an evaluation will be made to determine if the low bidder has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been pre-qualified, if required. Factors to be evaluated include, but are not limited to:

sufficient financial ability to perform the contract as evidenced by the bidder's ability to obtain payment and performance bonds from an acceptable surety; appropriate experience to perform the Work described in the bid documents; any judgments entered against the bidder, or any officers, directors, partners or owners for breach of a contract for construction; any substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause where the substantial noncompliance is documented; or a conviction of the bidder or any officer, director, partner, project manager, procurement manager, chief financial officer, or owner in the last five years of a crime relating to governmental or nongovernmental construction or contracting; any

current debarment of the contractor, any officer, director or owner, from bidding or contracting by any public body of any state, any state agency, or any agency of the federal government.

- b. The Owner reserves the right to disqualify or refuse to accept the bid of any bidder who has been convicted, or entered a plea of guilty or nolo contendere, in any federal or state court to any charge involving any unlawful, corrupt or collusive practice involving a public contract whether federal, state, or local, or who has been determined in any judicial proceeding to have violated any antitrust, bid-rigging or collusive practice statute in connection with any public contract, or against whom such formal criminal prosecution or other judicial proceeding has been initiated.
- c. The Town of Blacksburg will consider, in determining the qualifications of a bidder, his record in performance of any contracts for the services into which he may have entered with the Town or with other public bodies or corporations; and, the Town of Blacksburg expressly reserves the right to reject the bid of such bidder, if such record discloses that said bidder, in the opinion of the Town, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations to subcontractors, suppliers or employees.
- d. A bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder shall be notified in writing.

## 11. AWARD OF CONTRACT

a. **Basis for Contract Award:** The Contract, if awarded, will be awarded to the lowest responsive and responsible bidder, if any, provided his bid is reasonable and it is in the best interest of the Owner to accept it and subject to the Owner's right to reject any and all bids and to waive informality in the bids and in the bidding. Determination of the lowest responsible bidder, if any, will be based on the Total Base Bid amount including any properly submitted bid modifications plus as many Alternate/Additive Bid Items taken in sequence as the Owner in its discretion chooses to Award (if any).

b. **Informalities:** The Owner reserves the right to waive any informality in the bids when such waiver is in the interest of the Owner.

12. **AWARD PROTEST:** Any bidder desiring to protest the award or decision to award this contract shall submit such protest in writing to the Purchasing Agent within ten days after public notice of award or the announcement of the decision to award, whichever occurs first. Public notice of the award and/or decision to award shall be posted on the bulletin board in the Purchasing Office.

13. **CONTRACT SECURITY:** For contracts of \$100,000 and more, the Standard Performance Bond and the Standard Labor and Material Payment Bond shall be required, as specified in the Invitation for Bids documents. The Owner reserves the right to require such bonds for contracts less than \$100,000. If the Owner so elects, the requirement shall be set forth in the Invitation For Bids.

14. **CERTIFICATION:** The bidder, by his signature on the Bid Form, certifies that neither his organization nor any of its officers, directors, partners or owners is currently barred from bidding on contracts by any Agency of the Commonwealth of Virginia, or any public body or agency of another state, or any agency of the federal government.

**15. ETHICS IN PUBLIC CONTRACTING:** The provisions, requirements and prohibitions as contained in § 2,2-4367 et seq, Code of Virginia, as amended, pertaining to bidders, offerers, contractors, and subcontractors are applicable to this project.

- a. By submitting their bids, all Bidders certify that their bids are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, supplier, manufacturer or subcontractor in connection with their bid, and that they have not conferred on any public employee having official responsibility for this procurement transaction of any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**16. MINORITY UTILIZATION:** It is the policy of the Town of Blacksburg to contribute to the establishment, preservation, and strengthening of minority business enterprises and to encourage the participation of minority businesses in State procurement activities. Towards that end, the Owner encourages firms to provide for the participation of minority owned, women owned or small businesses through partnerships, joint ventures, subcontracts, and other contractual opportunities.

**17. BID DOCUMENTS:** Bid Documents are the property of the Owner and a deposit in an amount as stated in the Invitation for Bids may be required for each set as a guarantee of the safe return of the documents within ten (10) days of bid opening. This deposit will be refunded in full on not more than two sets to each bidder who submits a prime contract bid and who returns the documents in good condition. Refund will be made on sets to non-bidders and subcontractors in the amount of half of the deposit when the sets are returned in good condition within 10 days. A non-refundable shipping charge may be required if stated in the Notice or the Invitation For Bids.

**18. PRE-BID CONFERENCE:** None.

**19. PROGRESS SCHEDULE:**

- a. It is the intention of the Owner that two (2) copies of all necessary paperwork (Certificates of Insurance) be completed within ten (10) calendar days of the notice of award.
- b. A meeting will be held with the apparent low bidder to determine scheduling and availability.
- c. The Notice of Award shall be issued, by the Purchasing Office. This notice of Award will designate the Project Manager and instructions on a pre-construction conference, if applicable.
- d. In case of the failure of the Bidder to furnish the required forms, the Owner may consider the Bidder in default, in which case the Bid Bond shall become the property of the Owner.
- e. The Owner after receipt of the required forms from the Contractor shall issue a Purchase Order or Contract. The contract shall contain and may include by reference the following:

The Invitation for Bid issued by the Owner including Bidding Information,  
Drawings and Specifications  
The General Conditions issued with the Invitation for Bid  
Supplemental Conditions (if any)  
Instructions to Bidders  
Any addenda issued by the Owner

The Contractor's Bid Offer  
Notice of Award  
Certificates of Insurance  
Performance/Payment Bond  
Purchase Order/Notice to Proceed

- f. The Notice To Proceed shall be included with the purchase order.
- g. The Contractor shall commence work on the date as stated on the Notice to Proceed with full completion by the completion date as stated on same Notice. The time so stipulated shall be deemed to be of the essence of the Contract.
- 20. AUDIT:** The Contractor hereby agrees to retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by the Town of Blacksburg, whichever is sooner. The Town, its authorized agents, and/or State auditors shall have full access to and the right to examine any of the said materials during said period.
- 21. CONDITIONAL BIDS:** A conditional or qualified bid shall not be accepted.
- 22. ACCEPTANCE OF BIDS:** Bids submitted shall be binding for ninety (90) calendar days following the bid opening date, unless extended by mutual consent of all parties.
- 23. PROPRIETARY INFORMATION OR TRADE SECRETS:**  
Offerors are advised that Section 2.2-4342 of the Code of Virginia, i.e., the Virginia Public Procurement Act, shall govern public inspection of all records submitted by the Offeror/Bidder. Specifically, if Offeror seeks to protect any proprietary data or materials, pursuant to Section 2.2-4342, **Offeror shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is needed.** Furthermore, the Offeror shall submit proprietary information under separate cover, and the Owner reserves the right to submit such information to the Town Attorney for concurrence of the Offeror's claim that it is in fact proprietary. References may be made within the body of the proposal to proprietary information; however, all information contained within the body of the proposal not labeled proprietary or otherwise not meeting all three of the requirements of Section 2.2-4342 shall be public information in accordance with State statutes.
- 24. PRICING ERRORS:** In case of an error in price extension, the firm fixed unit price shall govern.
- 25. QUANTITIES:** The Town does not guarantee any minimum or maximum quantities. Quantities as specified are approximate and are prepared for the solicitation. The exact quantities shall be stated at time of order placement.
- 26. ANTI-TRUST:** By entering into a contract the Bidder conveys, sells, assigns, and transfers to the Town of Blacksburg all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town of Blacksburg under the contract.

27. **TIE BIDDING:** Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent or designee and/or investigation for Anti-Trust violations. Tie bids shall be awarded as stated in the Town of Blacksburg Procurement Code.
28. **LICENSE REQUIREMENT:** All firms having a business location or office in the Town of Blacksburg are required to be licensed in accordance with the Town's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Out of Town Contractors performing work in excess of \$25,000 must also obtain a license before work begins. Wholesale and retail merchants without a business location in the Town are exempt from this requirement. Questions concerning the BPOL tax should be directed to the Finance Department, telephone number (540) 961-1108.
29. **APPLICABLE LAWS AND COURTS:** Any Town contract shall be governed in all respects by the laws of the Commonwealth of Virginia, and any litigation with respect thereto shall be brought in the court of appropriate jurisdiction in Montgomery County, Virginia. The Contractor shall be responsible for compliance with all the laws of the Commonwealth of Virginia, all ordinances and regulations of the Town of Blacksburg and such other standards, codes, and regulations having application to the goods or services provided.
30. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets and descriptive literature shall be provided with the bid or delivery for each chemical and/or compound offered and/or purchased. Failure on the part of the Bidder to submit such data may be cause for declaring the bid as non-responsive.
31. **BIDDER'S RESPONSIBILITY:** Bidders shall examine the Contract Documents and shall exercise their own judgment as to the nature and total amount of all work to be done. No plea of ignorance of conditions that exist or that may later exist, or if conditions or difficulties that may be encountered in the work as a result of failure to make the necessary examination and investigation will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail the requirements of the contract documents, or will be accepted as a basis for any claims whatsoever for extra compensation.
32. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Town of Blacksburg, after due written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Blacksburg may have.
33. **VALID CONTRACT:** In order for any contract document entered into with the Town of Blacksburg to be valid, it must be executed by an authorized person as defined in Chapter 2, Article III, Section 2-300(d) of the Code of the Town of Blacksburg, Virginia.
34. **DEBARMENT STATUS:** By submitting a Bid or by the acceptance of a Town of Blacksburg Purchase Order, all firms certify that they are not currently debarred from doing business with or in the Commonwealth of Virginia, nor are they an agent of any person or entity that is currently debarred from doing business with or in the Commonwealth of Virginia.
35. **DRUG FREE WORKPLACE:** During the performance of this contract, if the contract is over \$10,000 the contractor agrees to (i) provide a drug free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be

taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug free workplace and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

**36. COMPLIANCE WITH STATE LAW; FOREIGN AND DOMESTIC BUSINESSES AUTHORIZED TO TRANSACT BUSINESS IN VIRGINIA:**

- a. Any contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
- b. The bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 must include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.
- c. Any bidder or offeror described in subsection b that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the chief executive of the Town of Blacksburg.
- d. Any business entity described in subsection a that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.
- e. The Town of Blacksburg may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**37. INDEMNIFICATION:** Successful Bidder shall assume the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Successful Bidder, its subcontractors, agents or employees under or in connection with this contract or the performance or failure to perform any work required by this contract. Successful Bidder shall save harmless and indemnify the Town, its agents, volunteers, servants, employees and officers from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as the result of claims or suits due to, arising out of or in connection with any and all such damage, real or alleged. Successful Bidder shall, upon written demand by the Town, assume and defend at Successful Bidder's sole expense any and all such suits or defense of claims.

Note: The Town *cannot legally* agree to any clause indemnifying the Bidder from any damages arising out of the contract or holding the Bidder harmless. The submission of a bid means that the Bidder agrees to not request such language in the resulting contract.

### III. FORMS

#### BID FORM

To: Town of Blacksburg, Virginia  
300 South Main Street  
Blacksburg, Virginia 24060

Date:  
Project: Transit Bus Pull Off  
Project #: 1192-24

In compliance with and subject to the Invitation for Bid and the documents therein specified, all of which are incorporated herein by reference, the undersigned bidder proposes to furnish all labor, equipment, and materials and perform all work necessary for construction of this project, in accordance with the plans and specifications, and any addenda for the amount indicated on the following bid forms. List any and all deviations to these specifications. Deviations discovered after bid opening or award not listed with your bid will be grounds for disqualification and nullification of contract.

**TOTAL LUMP SUM BID: \$** \_\_\_\_\_

**TOTAL LUMP SUM BID (written in words):** \_\_\_\_\_

Acknowledgment is made of receipt of the following addenda, if any:

\_\_\_\_\_

In submitting this bid, bidder represents, as more fully set forth in the agreement, that bidder has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the work.

Bidder is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

Bidder has correlated the information known to bidder, information and observations obtained from the visit to the site, reports and drawings identified in the contract documents and all additional examinations, investigations, explorations, tests, studies and data with the contract documents.

Bidder has given Owner written notice of all conflicts, errors, ambiguities or discrepancies in the contract documents and the written resolution thereof by Owner is acceptable to bidder and the contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the work for which this bid is submitted. Where conflicts, errors, ambiguities or discrepancies have been discovered in or between contract documents and/or other related documents, and where said conflicts, etc., have not been resolved through the interpretations or clarifications by Owner, because of insufficient time

or otherwise, Bidder has included in the bid the greater quantity or better quality of work, or compliance with the more stringent requirement resulting in a greater cost.

The bid is genuine and not made in the interest of or on behalf of an undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation. Bidder has not directly or indirectly induced or solicited any other bidder to submit a false or sham bid. Bidder has not solicited or induced any person, firm or corporation to refrain from bidding. Bidder has not sought by collusion to obtain for itself any advantage over any other bidder or over owner.

Immigration Reform and Control Act of 1986: The undersigned certifies that it does not and will not during the performance of the contract for this project violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens. The Contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

Disqualification of Contractors: By signing this bid or proposal, the undersigned certifies that this Bidder or any officer, director, partner or owner is not currently barred from bidding on contracts by any Agency of the Commonwealth of Virginia, or any public body or agency of another state, or any agency of the federal government, nor is this Bidder a subsidiary or affiliate of any firm/corporation that is currently barred from bidding on contracts by any of the same.

We have attached an explanation of any previous disbarment(s) and copies of notice(s) of reinstatement(s).

I certify that the firm name given below is the true and complete name of the bidder and that the bidder is legally qualified and licensed by the Commonwealth of Virginia, Department of Commerce, State Board for Contractors, to perform all work included in the scope of the contract.

Virginia License No. \_\_\_\_\_ Bidder \_\_\_\_\_  
(Name of Firm)

Contractor Class \_\_\_\_\_  
Specialty \_\_\_\_\_ By \_\_\_\_\_  
(Signature)

Valid until \_\_\_\_\_  
(Typed Name)

FEIN/SSN: \_\_\_\_\_ Title \_\_\_\_\_

Virginia State Corporation Commission Number: \_\_\_\_\_

Is your company certified through the State of Virginia as a SWAM business?

Yes \_\_\_\_\_ No \_\_\_\_\_

Is your company certified as a Federal DBE vendor?

Yes \_\_\_\_\_ No \_\_\_\_\_

If Partnership (List Partners' Names)

If Corporation, affix Corporate Seal &  
list State of Incorporation



\_\_\_\_\_ State: \_\_\_\_\_

\_\_\_\_\_ (Affix Seal)

\_\_\_\_\_

\_\_\_\_\_

Business Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone # \_\_\_\_\_

Fax # \_\_\_\_\_

The following employees in our organization are duly authorized to sign binding agreements for and on behalf of the Owner, Partner, or Corporation including, but not limited to, Invitations for Bid, Pay Request, Change Orders, Required Certifications, etc:

Type or Print Name

Signature

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractor Name: \_\_\_\_\_

Signed By: \_\_\_\_\_  
(Owner, Partner, or Principal of the Corporation)

\_\_\_\_\_  
(Typed Name)

\_\_\_\_\_  
(Title)

**STANDARD PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_, the Contractor (“Principal”) whose principal place of business is located at \_\_\_\_\_ and \_\_\_\_\_ (“Surety”) whose address for delivery of ‘Notices’ is located at \_\_\_\_\_ are held and firmly bound unto the Town of Blacksburg, Virginia, \_\_\_\_\_, the Owner (“Obligee”) in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_ ) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS,**

Principal has by written agreement dated \_\_\_\_\_ entered into a contract with Obligee for \_\_\_\_\_ which contract (the "Contract") is by reference expressly made a part hereof;

**NOW THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if the Principal shall promptly and faithfully perform said contract in strict conformity with the plans, specifications and conditions of the contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Provided, that any alterations which may be made in the terms of the contract, or in the work to be done under it, or the giving by the Obligee of any extension of time for the performance of the contract, or any other alterations, extensions or forbearance on the part of either or both of the Obligee or the Principal to the other shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alterations, extension, or forbearance being hereby waived.

No action shall be brought on this bond unless brought within one year after: (a) completion of the contract and all work thereunder, including expiration of all warranties and guarantees, or (b) discovery of the defect or breach of warranty or guarantee if the action be for such.

The Surety represents to the Principal and to the Obligee that it is legally authorized to do business in the Commonwealth of Virginia.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_

*Contractor / Principal* (SEAL)

By: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Witness*

*Surety* (SEAL)

By: \_\_\_\_\_

*Attorney-in-Fact*

Typed Name: \_\_\_\_\_

**AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT**

COMMONWEALTH OF VIRGINIA

(or alternatively, Commonwealth or State of \_\_\_\_\_ )

CITY of \_\_\_\_\_

I, the undersigned notary public, do certify that \_\_\_\_\_, whose name is signed to the foregoing performance bond in the sum of \_\_\_\_\_ and dated \_\_\_\_\_ and which names the Town of Blacksburg, Virginia, \_\_\_\_\_, as Obligee, personally appeared before me today in the above jurisdiction and made oath that he/she is the attorney-in-fact of \_\_\_\_\_, a \_\_\_\_\_ corporation which is the Surety in the foregoing bond, that he/she is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the surety, he/she acknowledged the foregoing bond before me as the above Surety's act and deed.

She/he has further certified that her/his Power of Attorney has not been revoked.

[Complete if Power is recorded: Clerk's Office: \_\_\_\_\_;

Deed Book/Page No. or Instrument No.: \_\_\_\_\_.]

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public*

(SEAL)

My name (printed) is: \_\_\_\_\_

My registration number is: \_\_\_\_\_

My commission expires: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
*Attorney /Designee*

\_\_\_\_\_  
Date

## TERMS AND CONDITIONS OF THE PERFORMANCE BOND

1. The contractor and the surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the owner for the prompt and faithful performance of the construction contract, which is incorporated herein by reference.
2. If the contractor promptly and faithfully performs the construction contract in strict conformity with the plans, specifications and conditions of the construction contract, the surety and the contractor shall have no obligations under this bond.
3. In the event of the contractor's default, and subsequent notification to the surety pursuant to Section 46 of the general conditions of the construction contract, the surety shall, within fourteen (14) days of receipt of such notice, contact the owner in writing, and arrange a meeting with the owner to discuss methods of completing the construction contract. See paragraph 4, below, for the options to be discussed. If the surety fails to arrange a meeting or fails to attend such meeting, the surety shall be deemed to be in default on this bond and the owner may, at its sole discretion, take what measures it deems necessary to protect the owner's interests, without further notice to the surety, and the owner shall be entitled to enforce any remedy available to the owner under the construction contract or under Virginia law.
4. Within thirty (30) days after such meeting, during which time the surety may investigate and otherwise analyze the project, and which period shall not toll any construction contract time periods nor operate as a waiver of any of the owner's rights, the surety shall, at its own expense, notify the owner in writing that it is taking one of the following actions, which shall be acceptable to the owner, at the owner's sole discretion:
  - a. By written takeover agreement with the owner, the surety itself shall undertake to perform and complete the construction contract, which it may do through its licensed agents or through licensed independent contractors. If the owner, at its sole discretion, consents, the contractor may serve as the surety's independent contractor (however, due to conflicts with the Virginia Public Procurement Act, the owner may not directly contract with an otherwise qualified independent contractor produced by the surety); or
  - b. The surety may, if acceptable to the owner and at the owner's sole discretion, waive its right to perform and complete the construction contract, and with reasonable promptness under the circumstances:
    - pay to the owner all amounts for which it may be liable to the owner as surety on this performance bond, including the damages described in paragraph 6 below; or
    - deny liability, in whole or in part, and provide written notice thereof to the owner, citing reasons therefore.
5. If, after the meeting described in paragraph 4, above, the surety does not proceed with reasonable promptness with one of the options provided in subparagraphs (a) or (b) (including its subparts), above, the owner may send additional written notice to the surety demanding that the surety perform its obligations under the bond. If the surety does not proceed to perform its obligations under the bond

within fifteen (15) days after receipt of said notice, the surety shall be deemed to be in default on this bond. Thereafter, the owner shall be entitled to enforce any remedy available to the owner under the bond, the construction contract or Virginia law. If the surety proceeds as provided in subparagraph (b), and the surety and the owner are unable to agree as to the amount for which the surety may be liable to the owner, or if the surety has denied liability, in whole or in part, the owner, without further notice, shall be entitled to enforce any remedy available to the owner under the bond, the construction contract or Virginia law. In such event, the owner may immediately proceed to complete the work in any manner authorized by law.

6. After the owner has terminated the contractor's right to complete the construction contract, and if the surety elects to act under subparagraph (a) or (b), above, then the responsibilities of the surety to the owner shall not be greater or less than those of the contractor under the construction contract, and the responsibilities of the owner to the surety shall not be greater than or less than those of the owner under the construction contract. To the limit of the amount of this bond, plus the increased cost of any change orders under the construction contract, provided the owner commits the balance of the construction contract price to the prompt and faithful completion of the construction contract, the surety is obligated without duplication for:
  - a. The responsibilities of the contractor for correction of defective work and completion of the construction contract;
  - b. Additional legal, design professional and delay costs resulting from the contractor's default, and resulting from the actions or failure to act of the surety under paragraph 4; and
  - c. Liquidated damages, or if no liquidated damages are specified in the construction contract, actual damages caused by delayed performance or non-performance of the contractor.

The owner, at its sole discretion, may waive its claim to delay costs and/or liquidated damages.

7. The surety shall not be liable to the owner for obligations of the contractor that are unrelated to the construction contract, and the balance of the contract price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this bond to any person or entity other than the owner, its officers, agencies, administrators, successors or assigns.
8. The surety hereby waives notice of any changes, including changes of time, to the construction contract or to related subcontracts, purchase orders and other obligations. The surety understands and agrees that the penal amount of the bond shall be increased or decreased by any changes to time and amount incorporated into any change orders.
9. Any proceeding by the owner, legal or equitable, under this bond will be instituted in any Virginia state court of competent jurisdiction located in Montgomery County, Virginia, as permitted under the general conditions of the construction contract and Virginia Code § 2.2-4337 and 2.2-4340, or by the contractor or surety, as permitted under the construction contract or under Virginia law.
10. Notice to the surety shall be mailed or delivered to the address shown on the standard performance bond in the space for surety address for delivery of notices.
11. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this bond conflicting with said statutory or

legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this bond shall be construed as a statutory bond and not as a common law bond when furnished to comply with statutory requirements.

12. DEFINITIONS

**Balance of the Construction Contract Price:** The total amount payable by the owner to the contractor under the construction contract after all proper adjustments have been made, reduced by all valid and proper payments made to or on behalf of the contractor under the construction contract.

**Construction Contract:** The agreement between the owner and the contractor identified on first page of the standard performance bond, including all construction contract documents and duly executed modifications and change orders thereto.

**Contractor Default:** Failure of the contractor, as defined in the general conditions to the construction contract, which has neither been remedied, as permitted at the owner's sole discretion, nor expressly waived by the owner, to perform or otherwise to comply with the terms of the construction contract.

13. Nothing in these general conditions shall prevent a surety from becoming involved in the construction contract prior to termination, upon notice from the owner of the contractor's failure to promptly and faithfully perform the construction contract in strict conformity with the plans, specifications and conditions of the construction contract.

## STANDARD LABOR AND MATERIAL PAYMENT BOND

**KNOW ALL MEN BY THESE PRESENTS:** That \_\_\_\_\_,  
\_\_\_\_\_, the Contractor ("Principal") whose principal place of business is located  
at \_\_\_\_\_ and  
\_\_\_\_\_ ("Surety") whose address for  
delivery of 'Notices' is located at \_\_\_\_\_  
are held and firmly bound unto the Town of Blacksburg, Virginia, the Owner ("Obligee") in the amount of  
\_\_\_\_\_  
Dollars (\$) for the payment whereof Principal and Surety bind themselves, their heirs, executors,  
administrators, successors and assigns, jointly and severally, firmly by these presents.

### WHEREAS,

Principal has by written agreement dated \_\_\_\_\_  
entered into a contract with Obligee for \_\_\_\_\_

\_\_\_\_\_ which contract (the "Contract") is by reference expressly made a part hereof;

**NOW THEREFORE, THE CONDITION OF THIS OBLIGATION** is such that, if the Principal shall promptly make payment to all claimants as hereinafter defined, for labor performed and material furnished in the prosecution of the Work provided for in the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions.

The Principal and Surety, jointly and severally, hereby agree with Obligee as follows:

1. A claimant is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both for use in the performance of the Contract. A "subcontractor" of the Principal, for the purposes of this bond only, includes not only those subcontractors having a direct contractual relationship with the Principal, but also any other contractor who undertakes to participate in the Work which the Principal is to perform under the aforesaid Contract, whether there are one or more intervening subcontractors contractually positioned between it and the Principal (for example, a subcontractor). "Labor" and "material" shall include, but not be limited to, public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the work site.
2. Subject to the provisions of paragraph 3, any claimant who has performed labor or furnished material in accordance with the Contract documents in the prosecution of the Work provided in the Contract, who has not been paid in full therefore before the expiration of ninety (90) days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on this bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The Obligee need not be a party to such action and shall not be liable for the payment of any costs, fees or expenses of any such suit.
3. Any claimant who has a direct contractual relationship with any subcontractor of the Principal from whom the Principal has not required a subcontractor payment bond, but who has no contractual relationship, express or implied, with the Principal, may bring an action on this bond only if he has given written notice to the Principal within ninety (90) days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the Work was performed or to whom the material was furnished. Notice to the

Principal shall be served by registered or certified mail, postage prepaid, in an envelope addressed to the Principal at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this paragraph.

No suit or action shall be commenced hereunder by any claimant:

a. Unless brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof, the limitation embodied within this bond shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

b. Other than in a Virginia court of competent jurisdiction, with venue as provided by statute, or in the United States District Court for the district in which the project, or any part thereof is situated.

The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
(SEAL)

Contractor/Principal

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
(SEAL)

Surety

By: \_\_\_\_\_

Attorney-in-Fact

Typed Name: \_\_\_\_\_



**AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT**

COMMONWEALTH OF VIRGINIA  
(or alternatively, Commonwealth or State of \_\_\_\_\_ )

CITY of \_\_\_\_\_

I, the undersigned notary public, do certify that \_\_\_\_\_, whose name is signed to the foregoing labor and material payment bond in the sum of \_\_\_\_\_ and dated \_\_\_\_\_ and which names the Town of Blacksburg, Virginia, \_\_\_\_\_, as Obligee, personally appeared before me today in the above jurisdiction and made oath that he/she is the attorney-in-fact of \_\_\_\_\_, a \_\_\_\_\_ corporation which is the Surety in the foregoing bond, that he/she is duly authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the surety, he/she acknowledged the foregoing bond before me as the above Surety's act and deed.

She/he has further certified that her/his Power of Attorney has not been revoked.

[Complete if Power is recorded: Clerk's Office: \_\_\_\_\_;  
Deed Book/Page No. or Instrument No.: \_\_\_\_\_.]

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
*Notary Public* (SEAL)

My name (printed) is: \_\_\_\_\_  
My registration number is: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
*Attorney /Designee* Date

**NOTICE OF AWARD**

**DATE:**

**TO:**

**Re: Town of Blacksburg, VA**

**PROJECT:**

**PROJECT #:**

Gentlemen:

Your Bid dated \_\_\_\_\_, 20\_\_\_\_ for the above Project has been considered and you are the apparent successful bidder. You are hereby notified that you have been awarded a contract for

The Contract Price of your contract is \_\_\_\_\_

Dollars (\$ \_\_\_\_\_).

Two copies each of the proposed Contract between Owner and Contractor and the Contract Documents accompany this Notice of Award.

You must comply with the following conditions precedent within fifteen days of the date of this Notice of Award, that is by \_\_\_\_\_, 20\_\_\_\_\_.

1. You must deliver to the OWNER two (2) fully executed counterparts of the Contract between Owner and Contractor including all the Contract Documents. This includes the sets of Plans and Specifications. Each of the Contract Documents must bear your signature on the Index page of the Plans and on the Specification Table of Contents page.
2. You must deliver with the executed Contract, the Contract Security as specified in the General Conditions.

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

After you comply with those conditions, and upon approval of the Contract by the Town Attorney and Town Council the OWNER will return to you one fully signed counterpart of the Contract with the Contract Documents.

\_\_\_\_\_  
*(Owner)*

By \_\_\_\_\_  
*(Authorized Signature)*

\_\_\_\_\_  
*(Typed Name & Title)*

**CERTIFICATE OF COMPLETION BY CONTRACTOR**

Date:

Town of Blacksburg, Virginia  
Blacksburg, Virginia 24060

**PROJECT:**  
**PROJECT #:**

In accordance with the requirements of the Contract between Owner and Contractor, the undersigned Contractor hereby states that the above named project has been fully completed in accordance with the requirements of the Contract Documents as modified by approved change orders.

All applicable tests, certificates and regulatory inspections required by the Town of Blacksburg and the Contract Documents have been performed with respect to the completed project and the Owner has been provided with a copy of each report.

The Owner has been provided with a copy of all warranties and guarantees, including the starting date(s) of all warranties and guarantees, written and unwritten, required by the Contract Documents.

All training, operating instructions and maintenance manuals required by the Contract Documents have been provided to the Owner.

\_\_\_\_\_  
(Typed Contractor Name)

By: \_\_\_\_\_

\_\_\_\_\_  
(Typed Name & Title of Person Signing)

**CERTIFICATE OF PARTIAL OR SUBSTANTIAL COMPLETION BY CONTRACTOR**

Date:

Town of Blacksburg, Virginia  
Blacksburg, Virginia 24060

**PROJECT:**  
**PROJECT #:**

In accordance with the requirements of the Agreement between the Owner and the Contractor, the undersigned Contractor hereby states that portions of the above named project are substantially completed in accordance with the requirements of the Contract Documents as modified by approved change orders. Those portions of the project now substantially complete are: *(list or describe)*

All applicable tests, certificates and regulatory inspections required by the Town of Blacksburg and the Contract Documents have been performed with respect to the substantially completed portions of the project and the Owner has been provided with a copy of each report.

The Owner has been provided with a copy of all warranties and guarantees, including the starting date(s) of all warranties and guarantees, written and unwritten, required by the Contract Documents with respect to the completed portions of the project, except as follows:

All training, operating instructions and maintenance manuals required by the Contract Documents have been provided to the Owner, except as follows: *(list or describe)*

This certificate does not constitute an acceptance of Work not in accordance with the Contract Documents nor is it a release of CONTRACTOR's obligation to complete the Work in accordance with the Contract Documents.

\_\_\_\_\_  
Typed Contractor Name

By: \_\_\_\_\_

\_\_\_\_\_  
Typed Name & Title

**COMMONWEALTH OF VIRGINIA  
WORKERS' COMPENSATION  
Certificate of Coverage**

Section 2.2-4332, Code of Virginia, requires construction contractors and subcontractors to obtain and maintain workers' compensation insurance while performing work on behalf of the Commonwealth of Virginia, its departments, institutions, or agencies. This same requirement applies on behalf of local governments.

Evidence of coverage must be provided prior to commencement of Work.

This form must be completed and returned to the organization contracting the Work.

The undersigned organization stipulates that it:

- A. has workers' compensation insurance and is in compliance with the Workers' Compensation statutes of the Commonwealth of Virginia.  Yes  No  
Insurance Company \_\_\_\_\_  
Policy expiration date \_\_\_\_\_
- B. is self insured for workers' compensation.  Yes

Title of Construction Contract: \_\_\_\_\_

Contract Number: \_\_\_\_\_

Signed by: \_\_\_\_\_

Title: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**TOWN OF BLACKSBURG, VIRGINIA  
CONTRACT BETWEEN OWNER AND CONTRACTOR  
IFB**

This Contract, dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between the Town of Blacksburg (“Owner”) and \_\_\_\_\_ (“Contractor”), is binding among and between these parties.

**RECITALS**

1. The legal address for the Owner and for the Contractor and the addresses for delivery of Notices and other project documents are as follows:

Owner:

Attn:  
Project Manager

Address:

City, State, Zip:

Telephone:

Fax:

Email

Contractor:

Attn:

Address:

City, State, Zip:

Telephone:

Fax:

Email

Contractor’s Virginia License #:

FEIN/SSN:

SCC #:

2. The Project is identified as:

Project Title:

Project Code – PC#:

General Project Description:

3. After competitive sealed bidding pursuant to the Virginia Public Procurement Act, Contractor is awarded this Contract to perform the Work described by the Contract Documents for the above-described project (“the Project”).

**THEREFORE**, in consideration of the Recitals set forth above, and good and valuable consideration as set forth below, the parties agree as follows:

**1. STATEMENT OF WORK:** The Contractor shall furnish all labor, equipment, and materials and perform all Work for the Project in strict accordance with the Contract Documents.

**2. CONTRACT DOCUMENTS:** This Contract shall consist of the following:

- this Contract Between Owner and Contractor;
- the Bid Form submitted by the Contractor;
- bid modifications issued as addenda (if any);
- the General Conditions of the Construction Contract,  
(referred to as the "General Conditions")
- the Supplemental General Conditions, if any;
- the Special Conditions attached to the Owner's Invitation for Bids;
- the Owner's Project Plans and Specifications dated \_\_\_\_\_;
- Post Bid Modification(s), if any, dated \_\_\_\_\_

All of these documents are incorporated herein by reference.

**3. TIME FOR COMPLETION:** The work shall be commenced on a date to be specified in a written order by the Owner.

**4. COMPENSATION TO BE PAID TO THE CONTRACTOR:** The Owner agrees to pay and the Contractor agrees to accept as just and adequate compensation for the performance of the Work in accordance with the Contract Documents the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_).

**5. PAYMENTS:** The procedures for establishing a Schedule of Values for the Work, for requesting monthly progress payments for Work in place, and for requesting payments for properly stored materials are stated in the General Conditions. Unless otherwise provided under the Contract Documents, interest on payments due the Contractor shall accrue at the rate of one percent per month. §2.2-4354 of the Code of Virginia.

**6. CONTRACTUAL CLAIMS:** Any contractual claims shall be submitted in accordance with the contractual dispute procedures set forth in Section 16-506 of the Code of the Town of Blacksburg, Virginia.

**7. NON-DISCRIMINATION AND DRUG FREE WORKPLACE:** Sections §2.2-4311 and 4312 of the Code of Virginia apply to this contract.

**8. LIQUIDATED DAMAGES:**

**9. INCENTIVE/DISINCENTIVE:**

Modification or Amendment: No amendment, change or modification of this Contract shall be valid unless in writing signed by the parties hereto.

Entire Understanding: This document and any exhibit attached or documents incorporated by reference constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.

**IN WITNESS WHEREOF**, the parties hereto on the day and year written below have executed this agreement in three (3) counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed on original thereof.

**For the CONTRACTOR:**

**For the OWNER:**

By: \_\_\_\_\_  
*(signature in ink)* *(date)*

By: \_\_\_\_\_  
*(signature in ink)* *(date)*

\_\_\_\_\_  
*(typed name)*

\_\_\_\_\_  
*(typed name)*

\_\_\_\_\_  
*(typed title)*

\_\_\_\_\_  
*(typed title)*

Attest:  
\_\_\_\_\_  
*(signature in ink)* *(date)*

Attest:  
\_\_\_\_\_  
*(signature in ink)* *(date)*

**Attachments:**

- Bid Form Submitted by the Contractor
- Post Bid Modification, if any



**Schedule of Values and Certificate for Payment Number \_\_\_\_\_**

Project Title \_\_\_\_\_ Number \_\_\_\_\_ Town of Blacksburg, VA

Attach Supporting detail sheets	Total Value	Previous Value to Date	Value This Report	Current Value to Date	Percent Complete
Original Contract					
Approved Change Orders					
Adjusted Contract Total					
Less: Retainage					
Net Requested Amount					

The undersigned Contractor requests payment of that portion of the contract price shown on the last line of the foregoing Schedule of Values, and represents and warrants to the Owner that: (1) the data shown is accurate and correct; (2) the Work covered by this Certificate has been completed in accordance with the Contract Documents; (3) all previous progress payments received from Owner on account of Work done under this Contract have been applied to discharge in full (except for allowable retainage) all obligations of Contractor incurred in connection with Work covered by prior Certificates for Payment numbered \_\_\_\_\_ through \_\_\_\_\_ inclusive; and (4) title to all materials and equipment for which payment is requested in this Certificate, whether or not incorporated in said Work will pass to Owner at time of payment free and clear of all liens, claims, security interests and encumbrances (except such materials and equipment which are covered by a Bond previously accepted by Owner).

FEIN# \_\_\_\_\_ Contractor: \_\_\_\_\_  
 Date \_\_\_\_\_ By: \_\_\_\_\_  
 Typed Name \_\_\_\_\_

**ENGINEER ACTION**

Amount approved for payment this certificate is: \_\_\_\_\_  
 By \_\_\_\_\_ Title \_\_\_\_\_  
 Date \_\_\_\_\_  
 Comments: \_\_\_\_\_

**TOWN ACTION**

Amount approved for payment this certificate is: \_\_\_\_\_  
 By \_\_\_\_\_ Title \_\_\_\_\_  
 Date \_\_\_\_\_

**TOWN OF BLACKSBURG CHANGE ORDER NUMBER \_\_\_\_\_**

ISSUE DATE: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

CONTRACT: \_\_\_\_\_

PROJECT: \_\_\_\_\_

OWNER'S CONTRACT #: \_\_\_\_\_

ENGINEER: \_\_\_\_\_

You are directed to make the following changes in the Contract Documents:

Description: \_\_\_\_\_

Reason for change order: \_\_\_\_\_

Attachments: \_\_\_\_\_

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIME
Original Contract Price \$ _____	Original Contract Times: Substantial Completion: _____ days Ready for final payment: _____ days
Net Increase (decrease) from previous Change Orders No. _____ To _____ \$ _____	Net change from previous Change Orders No. _____ To No. _____ Substantial Completion: _____ days Ready for final Payment _____ days
Contract Price prior to this Change Order: \$ _____	Contract Times prior to this Change Order: Substantial Completion: _____ days Ready for final payment _____ days
Net increase (decrease) of this Change Order: \$ _____	Net increase (decrease) this Change Order: Substantial Completion: _____ days Ready for final payment: _____ days
Contract Price with all approved Change Orders \$ _____	Contract Times with all approved Change Orders: Substantial Completion: _____ days Ready for final payment _____ days

RECOMMENDED

APPROVED

ACCEPTED

By \_\_\_\_\_  
Engineer

Owner \_\_\_\_\_

Contractor \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Approved \_\_\_\_\_ (Purchasing Office)

## CONTRACTOR'S STATEMENT OF QUALIFICATIONS

### General Information

Submitted to Town of Blacksburg, VA:

Address:

Name of Project (if applicable):  
and Project Number

Type of work you wish to qualify for:

General Construction

Mechanical

Electrical

Other

Specify:

Contractor's Name:

Mailing Address:

Street Address: (If not the same as mailing address)

Telephone Number: ( )

Facsimile Number: ( )

Contact Person:

Contact Person Phone Number: ( )

State Contractor's License Number:

Designated Employee Registered with the Virginia Board for Contractors:

**General Information** (continued)

Check type of organization:

Corporation \_\_\_\_\_

Partnership \_\_\_\_\_

Individual \_\_\_\_\_

Joint Venture \_\_\_\_\_

Other \_\_\_\_\_

If a corporation -

State of Incorporation:

Date of Incorporation:

Federal I.D. #:

<u>Officers</u>	<u>Name</u>	<u>Years in Position</u>
-----------------	-------------	--------------------------

President:

Vice President

Secretary

Treasurer

Are you a Subchapter S Corporation? Yes \_\_\_\_\_ No \_\_\_\_

If a partnership -

Date organized:

Type of partnership:

List of General Partners:

<u>Name</u>	<u>Phone #</u>	<u>Years as G.P.</u>
-------------	----------------	----------------------

If individually owned -

Years in Business:

Have you ever operated under another name? Yes \_\_\_\_\_ No \_\_\_\_

If yes -

Other name:

Number of years in business under this name:

State license number under this name:

### **Judgments**

In the last ten years, has your organization, or any officer, director, partner or owner, had judgments entered against it or them for the breach of contracts for construction?

Yes \_\_\_\_\_ No \_\_\_\_

If yes, please on a separate attachment, state the person or entity against whom the judgment was entered, give the location and date of the judgment, describe the project involved, and explain the circumstances relating to the judgment, including the names, addresses and phone numbers of persons who might be contacted for additional information.

### **Convictions and Debarment**

If you answer yes to any of the following, please on a separate attachment, state the person or entity against whom the conviction or debarment was entered, give the location and date of the conviction or debarment, describe the project involved, and explain the circumstances relating to the conviction or debarment, including the names, addresses and phone numbers of persons who might be contacted for additional information.

In the last ten years, has your organization or any officer, director, partner, owner, project manager, procurement manager or chief financial officer of your organization:

ever been fined or adjudicated of having failed to abate a citation for building code violations by a court or local building code appeals board?

Yes \_\_\_\_\_ No \_\_\_\_

ever been found guilty on charges relating to conflicts of interest?

Yes \_\_\_\_\_ No \_\_\_\_

ever been convicted on criminal charges relating to contracting, construction, bidding, bid rigging or bribery?

Yes \_\_\_\_\_ No \_\_\_\_

ever been convicted: (i) under Va. Code Section 11-72 et seq. (Ethics in Public Contracting); (ii) under Va. Code Section 18.2-498.1 et seq. (Va. Governmental Frauds Act); (iii) under Va. Code Section 59.1-68.6 et seq. (Conspiracy to Rig Bids); (iv) of a criminal violation of Va. Code Section 40.1-49.4 (enforcement of occupational safety and health standards); or (v) of violating any substantially similar federal law or law of another state?

Yes \_\_\_\_\_ No \_\_\_\_

Is your organization or any officer, director, partner or owner currently debarred from doing federal, state or local government work for any reason?

Yes \_\_\_\_\_ No \_\_\_\_

### **Compliance**

If you answer yes to any of the following, please on a separate attachment give the date of the termination order, or payment, describe the project involved, and explain the circumstances relating to same, including the names, addresses and phone numbers of persons who might be contacted for additional information.

Has your organization:

a. ever been terminated on a contract for cause?

Yes \_\_\_\_\_ No \_\_\_\_

b. within the last five years, made payment of actual and/or liquidated damages for failure to complete a project by the contracted date?

Yes \_\_\_\_\_ No \_\_\_\_

Has your organization, in the last three years, received a final order for willful and/or repeated violation(s) for failure to abate issued by the United States Occupational Safety and Health Administration or by the Virginia Department of Labor and Industry or any other government agency?

Yes \_\_\_\_\_ No \_\_\_\_

Have any Performance or Payment Bond claims ever been paid by any surety on behalf of your organization?

Yes \_\_\_\_\_ No \_\_\_\_

### **Experience**

If your organization has multiple offices, provide the following information for the office that would handle projects under this prequalification. If that office has limited history, list its experience first.

Attach a list of all projects, giving address, size and dollar value for each, that your organization has completed in the last five years. Provide for each, the name, address, and phone number, for the Owner's and Architect's contact or representative.

Attach a list of your organization's projects in progress, if any, at the time of this statement. At a minimum, provide project names and addresses, contract amounts, percentages complete and contact names and numbers for the architects and owners.

If this statement is for a particular project, identify three projects from those identified in 1 and 2 above which are most relevant or similar to the project(s) for which you are seeking prequalification.

**Job 1.**

Name:

Address:

Size of Project such as: (gross square feet, height, or stories plus sub-surface levels, total cost)

Owner's Name:

Address:

Phone Number:

Contact:

Engineer's Name:

Address:

Phone Number:

Contact:

Final or current Contract Amount:

Project Description, i.e., function of building and component building systems:

**Job 2.**

Name:

Address:

Size of Project such as: (gross square feet, height, or stories plus sub-surface levels, total cost)

Owner's Name:

Address:

Phone Number:

Contact:

Engineer's Name:

Address:

Phone Number:

Contact:

**Job 3.**

Name:

Address:

Size of Project such as: (gross square feet, height, or stories plus sub-surface levels, total cost)

Owner's Name:

Address:

Phone Number:

Contact:

Engineer's Name:

Address:

Phone Number:

Contact:



## IV. GENERAL CONDITIONS

### A. DEFINITIONS

Whenever used in these General Conditions of the Construction Contract ("General Conditions") or in the Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:

**Town:** The Public Body, institution or department which is a party to the Contract. For purposes of the Contract, the term Owner shall include such Town, whether or not the Town owns the site or the building.

**Architect, Engineer, Engineer or A/E:** The term used to designate the Architect and/or the Engineer that contracts with the Owner to provide the Architectural and Engineering services for the Project. The ENGINEER is a separate contractor and not an agent of the Owner. The term includes any associates or consultants employed by the ENGINEER to assist in providing the ENGINEER services.

**Beneficial Occupancy:** The condition after Substantial Completion but prior to Final Completion of the Project at which time the Project, or portion thereof, is sufficiently complete and systems operational such that the Owner could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended use. Guarantees and warranties applicable to that portion of the Work begin on the date the Owner accepts the Project, or a portion thereof, for such Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions or by separate agreement.

**Change Order:** A document issued on or after the effective date of the Contract between Owner and Contractor which is agreed to by the Contractor and approved by the Owner, and which authorizes an addition, deletion or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. The term Change Order shall also include written orders to proceed. A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

**Code of Virginia:** 1950 Code of Virginia as amended. Sections of the Code referred to herein are noted by (§ XX-XX).

**Construction:** The term used to include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities, including any draining, dredging, excavation, grading or similar work upon real property.

**Contract:** The Contract between Owner and Contractor, hereinafter referred to as the Contract.

**Contract Completion Date:** The date by which the Work must be substantially complete. The Contract Completion Date is customarily established in the Notice to Proceed, based on the Time for Completion. In some instances, however, the Contract contains a mandatory Contract Completion Date, which shall be stated in the Invitation for Bid.

**Contract Documents:** The Contract between Owner and Contractor signed by the Owner and the Contractor and any documents expressly incorporated herein. Such incorporated documents customarily include the bid submitted by the Contractor, these General Conditions, any Supplemental General Conditions, any Special Conditions, the plans and the specifications, and all modifications, including addenda and subsequent Change Orders.

**Contract Price:** The total compensation payable to the Contractor for performing the Work, subject to modification by Change Order.

**Contractor:** The person with whom the Owner has entered into a contractual agreement to do the Work.

**Day(s):** Calendar day(s) unless otherwise noted.

**Defective:** An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents or does not meet the requirements of inspections, standards, tests or approvals required by the Contract Documents, or Work that has been damaged prior to the Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion or Beneficial Occupancy).

**Drawing:** A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Work. The graphic representations include, but are not limited to, plan views, elevations, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

**Emergency:** Any unforeseen situation, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

**Final Completion Date:** The date of the Owner's acceptance of the Work from the Contractor upon confirmation from the Engineer and the Contractor that the Work is totally complete.

**Field Order:** A written order issued by the Engineer which clarifies or explains the plans or specifications, or any portion or detail thereof, without changing the design, the Contract Price, the Time for Completion or the Contract Completion Date.

**Float:** The excess time included in a construction schedule to accommodate such items as inclement weather and associated delays, equipment failures, and other such unscheduled events. It is the contingency time associated with a path or chain of activities and represents the amount of time by which the early finish date of an activity may be delayed without impacting the critical path and delaying the overall completion of the Project. Any difference in time between the Contractor's approved early completion date and the Contract Completion Date shall be considered a part of the Project float.

**Float, Free:** The time (in days) by which an activity may be delayed or lengthened without impacting upon the start day of any activity following in the chain.

**Float, Total:** The difference (in days) between the maximum time available within which to perform an activity and the duration of an activity. It represents the time by which an activity may be delayed or lengthened without impacting the Time for Completion or the Contract Completion Date.

**Notice:** All written notices, including demands, instructions, claims, approvals and disapprovals, required or authorized under the Contract Documents. Any written notice by either party to the Contract shall be sufficiently given by any one or combination of the following, whichever shall first occur: (1) delivered by hand to the last known business address of the person to whom the notice is due; (2) delivered by hand to the person's authorized agent, representative or officer wherever they may be found; or (3) enclosed in a postage prepaid

envelope addressed to such last known business address and delivered to a United States Postal Service official or mailbox. Notice is effective upon such delivery. All notices to the Owner should be directed to the Project Manager.

If the Owner and the Contractor agree in writing that Notices transmitted by Facsimile (Fax) are acceptable for the Project, such Notice shall be transmitted to the Fax number listed in the agreement and shall have a designated space for the Fax Notice recipient to acknowledge his receipt by authorized signature and date. The Fax Notice with authorized signature acknowledging receipt shall be faxed back to the sender. The Faxed Notice shall be effective on the date it is acknowledged by authorized signature. All Faxed Notices shall also be sent by hard copy, which shall be effective upon delivery, as provided herein. Notice shall be effective upon the date of acknowledgment of the Faxed Notice or the date of delivery, whichever occurs first.

**Notice to Proceed:** A written notice given by the Owner to the Contractor (with a copy to ENGINEER) fixing the date on which the Contact time will commence for the Contractor to begin the prosecution of the Work in accordance with the requirements of the Contract Documents. The Notice to Proceed will customarily identify a Contract Completion Date.

**Owner:** The public body with whom the Contractor has entered into a contractual agreement and for whom the Work or services is to be provided. The term "Owner", as used herein, shall also mean the Town.

**Person:** This term includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

**Plans:** The term used to describe the group or set of project-specific drawings which are included in the Contract Documents.

**Project:** The term used instead of the specific or proper assigned title of the entire undertaking which includes, but is not limited to, the "Work" described by the Contract Documents.

**Project Inspector:** One or more persons employed by the Owner to inspect the Work for the Owner and/or to document and maintain records of activities at the Site to the extent required by the Owner. The Owner shall notify the Contractor in writing of the appointment of such Project Inspector(s). The scope of the Project Inspector's authority with respect to the Contractor is limited to that indicated in Section 16 (e) and (f) and as supplemented by the Owner in writing to the Project Inspector and to the Contractor.

**Project Manager:** The Project Manager as used herein shall be the Owner's designated representative on the Project. The Project Manager shall be the person through whom the Owner generally conveys written decisions and notices. All notices due the Owner and all information required to be conveyed to the Owner shall be conveyed to the Project Manager. The scope of the Project Manager's authority is limited to that authorized by the Owner, who shall provide written information to the Contractor at the Preconstruction meeting defining those limits. Upon receipt of such information, the Contractor shall be on notice that it cannot rely on any decisions of the Project Manager outside the scope of his authority. Nothing herein shall be construed to prevent the Owner from issuing any notice directly to the Contractor. The Owner may change the Project Manager from time to time and may, in the event that the Project Manager is absent, disabled or otherwise temporarily unable to fulfill his duties, appoint an interim Project Manager.

**Provide:** Shall mean furnish and install ready for its intended use.

**Site:** Shall mean the location at which the Work is performed or is to be performed.

**Specifications:** That part of the Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official to determine code compliance and for the Contractor to perform the Work. (The General Conditions, any Supplemental General Conditions, various bidding information and instructions, and blank copies of various forms to be used during the execution of the Work are usually bound with the Specifications.)

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

**Submittals:** All shop, fabrication, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment conformance of some portion of the Work with the requirements of the Contract Documents.

**Substantial Completion:** The condition when the Owner agrees that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by the Owner for the purposes for which it was intended. The Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until after Final Completion is achieved.

**Supplemental General Conditions:** That part of the Contract Documents which amends or supplements the General Conditions.

**Supplier:** A manufacturer, fabricator, distributor, material man or vendor who provides material for the Project but does not provide on-site labor.

**Time for Completion:** The number of consecutive calendar days following the issuance of the Notice to Proceed which the Contractor has to substantially complete all Work required by the Contract. When the Notice to Proceed is issued, it states a Contract Completion Date, which has been set by the Owner based on the Time for Completion.

**Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which are, or have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

**Work:** The services performed under this Contract including, but not limited to, furnishing labor, and furnishing and incorporating materials and equipment into the construction. The Work also includes the entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents.

## **B. TERMS AND CONDITIONS**

### **1. CONTRACT DOCUMENTS**

- (a) The Contract between Owner and Contractor, the Workers' Compensation Certificate of Coverage, the Standard Performance Bond, the Standard Labor and Material Payment Bond, the Schedule of Values and Certificate for Payment, the Affidavit of Payments of Claims, the Contractors Certificate of Substantial Completion, and the Contractor's Certificate of Completion are forms incorporated in these General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein. They must be used by the Contractor for their respective purposes.
- (b) All time limits stated in the Contract Documents, including but not limited to the Time for Completion of the Work, are of the essence of the Contract.
- (c) The Contract between Owner and Contractor shall be signed by the Owner and the Contractor in as many original counterparts as may be mutually agreed upon, each of which shall be considered an original.
- (d) Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect. In the event of conflicts among the Contract Documents, the Contract Documents shall take precedence in the following order: the Contract between Owner and Contractor; the Supplemental General Conditions; the General Conditions; the Special Conditions; the specifications with attachments; and the plans.
- (e) If any provision of this Contract shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision.
- (f) All correspondence, invoices, memoranda, submittals and other documents related to this Project whether generated by the Owner, the ENGINEER, the Contractor or others should be identified at the beginning of the document with the Bid Number. Additional identification such as a job number, purchase order number or such may also be shown at the generator's option.

### **2. LAWS AND REGULATIONS**

- (a) The Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby.
- (b) This Contract and all other contracts and subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the "right to work." The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.
- (c) IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits

employment of illegal aliens. The contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

- (d) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all Work under this Contract. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search or administrative warrant.
- (e) Building Permit: Town of Blacksburg codes, zoning ordinances, etc. do apply to Work on the property. The Virginia Uniform Statewide Building Code applies to the Work and is administered by the Building Official for the Town. If required, a Building Permit will be obtained and paid for by the Contractor. All other permits, local license fees, business fees, taxes, or similar assessments imposed by the Town shall be obtained and paid for by the Contractor. See Section 24 for utility connection fees and services.
- (f) The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements in Subsections (a), (b), and (c) of Section 36 of these General Conditions with respect to each lower-tier Subcontractor and Supplier.
- (g) The Contractor, if not licensed as an asbestos abatement contractor or an RFS contractor in accordance with § 54.1-514, Code of Virginia, shall have all asbestos-related Work performed by subcontractors who are duly licensed as asbestos contractors or RFS contractors as appropriate for the Work required.
- (h) Lead Based Paint Activities: If the Contract Documents indicate that lead based paint is present on existing materials, components, or surfaces, the Contractor shall conform to the following:
  - (1) The requirements set forth in 59 Federal Register 45,872 (September 2, 1994) Proposed Rule) *Lead; Requirements for Lead based Paint Activities (Proposed Rules)* in selecting and performing the means, methods and procedures for performing the Work. This includes, but is not limited to, training of personnel, lead abatement, encapsulation of lead containing materials, removal and handling of lead containing materials, and methods of disposal. When the Final Rule, to be codified at 40 CFR 745, supersedes the Proposed Rule, the Contractor shall be responsible for conforming to the Final Rule, as of the effective date set forth therein.
  - (2) The requirements for employee protection contained in 29 CFR Part 1926, Subpart D, and the requirements for record-keeping contained 29 CFR Part 1910.
  - (3) The Virginia Department of Labor and Industry's (DLI) Emergency Regulation published in the May 27, 1996. Virginia Register, requiring, among other things, that a permit be issued to the lead abatement contractor, or any subsequent regulation issued by DLI.
- (i) If the Contractor violates laws or regulations that govern the Project, the Contractor shall indemnify and hold the Owner harmless against any fines and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct

of the Contractor, the Contractor shall indemnify and hold the Owner harmless against any third party claims, suits, awards, actions, causes of action or judgments, including but not limited to attorney's fees and costs incurred thereunder, that result from such violation.

### **3. NONDISCRIMINATION:**

By submitting their (bids/proposals), (bidders/offerors) certify to the Town that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every contract over \$10,000 the provisions below apply:

1. During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
  - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

The Town does not discriminate against faith based organizations.

### **4. PROHIBITION OF ALCOHOL AND OTHER DRUGS**

- (a) The Contractor shall establish, maintain and enforce policies, which prohibit the following acts by all Contractor, Subcontractor and Supplier personnel at the Site:
  - (1) the manufacture, distribution, dispensation, possession, or use of alcohol or other drugs, except possession and medically prescribed use of prescription drugs; and

- (2) the impairment of judgment or physical abilities due to the use of alcohol or other drugs, including impairment from prescription drugs.
- (b) The Contractor shall post a copy of the policy in a conspicuous place at the Site and assure that all Contractors, Subcontractor and Supplier personnel entering the Site are informed of and comply with the policy.

## 5. TIME FOR COMPLETION

- (a) The Time for Completion shall be designated by the Owner on the Invitation for Bids or other pre-bid documents. In some instances, the Time for Completion may be stated on the Invitation for Bids or other pre-bid document in the form of a Contract Completion Date. The Work must be substantially completed by the Time for Completion or the Contract Completion Date. Unless otherwise specified, the Contractor shall achieve Final Completion within thirty (30) days after the date of Substantial Completion.
- (b) The Time for Completion shall be stated in the Contract between Owner and Contractor and shall become a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes. If the Contractor fails to substantially complete the Work within the Time for Completion or Contract Completion Date, as set forth in the Contract, he shall be subject to payment of actual damages incurred by the Owner or liquidated damages, if provided for in the Contract.
- (c) The Contractor, in submitting his bid, acknowledges that he has taken into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather data for the past ten (10) years, (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, National Oceanic and Atmospheric Administration / Environmental Data and Information Service, National Climatic Center and National Weather Service. The data sheets to be used shall be those for the locality or localities closest to the site of the work. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will be considered by the Owner under the following conditions:
  - (1) The request for additional time shall be further substantiated by weather data collected during the period of delay at the Site. Said data must demonstrate that an actual departure from normal weather occurred at the Site during the dates in question.
  - (2) The extension requested must be supported by a delay in completion of the entire Project shown on the critical path of the accepted CPM Schedule or the approved bar graph schedule required for the Project. Extensions will be granted only for delays in completion of the Project, not for that portion of any delay which consumes only "float" time.
  - (3) A request for extension of time based on abnormal weather must be made in writing within five (5) calendar days of the completion of the calendar month during which abnormal weather is claimed at the Site.



- (4) All of the evidence and data supporting the request (including both historical data and the recordings at the Site during the time of delay) must be furnished to the Owner before any consideration will be given to the request. That supporting data shall be submitted by the end of the calendar month following the month for which the request is made.
- (d) The Contractor represents and agrees that he has taken into account in his bid the requirements of the bid documents, local conditions, availability of materials, equipment, and labor, and any other factors, which may affect the performance of the Work. The Contractor agrees and warrants that he will achieve Substantial Completion of the Work to allow the Owner to have Beneficial Occupancy not later than the Time for Completion or Contract Completion Date. The Contractor agrees that he will achieve Final Completion of the Work (the entire completion of all Work, including "punch list" items), not later than 45 days.

## **6. CONDITIONS AT SITE**

- (a) The Contractor shall have visited the Site prior to bidding and is totally responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site, and the character and extent of existing improvements and work within or adjacent to the Site. Claims, which result from the Contractor's failure to do so, will be deemed waived.
- (b) If, in the performance of the Contract, hidden physical conditions of a building being modified are exposed revealing unusual or materially different conditions from those ordinarily encountered or inherent in work of this nature, or if subsurface or latent conditions at the Site are found which are materially different from those frequently present in the locality or from those indicated in the Contract Documents, the Contractor must report such conditions to the Owner and to the Engineer before the conditions are disturbed. Upon such notice, or upon his own observation of such conditions, the Engineer shall promptly propose such changes in the Contract Documents as he finds necessary to conform to the different conditions. Any change in the cost of the Work or additional time needed for completion must be requested pursuant to these General Conditions.
- (c) If the Contractor, during the course of the Work, observes the existence of any material which he knows, should know, or has reason to believe is hazardous to human health, the Contractor shall promptly notify the Owner. The Owner will provide the Contractor with instructions regarding the disposition of the material. The Contractor shall not perform any Work involving the material or any Work causing the material to be less accessible prior to receipt of special instructions from the Owner.

## **7. CONTRACT SECURITY**

- (a) For contracts with a value exceeding one hundred thousand dollars (\$100,000), the Contractor shall deliver to the Owner or its designated representative, a Standard Performance Bond and a Standard Labor and Material Payment Bond, each fully executed by the Contractor and one or more surety companies legally licensed to do business in Virginia and each in an amount equal to one hundred percent (100%) of the accepted bid. If more than one Surety executes a bond, each shall be jointly and severally liable to the Owner for the entire amount of the bond. Sureties shall be selected by the Contractor, subject to approval by the Owner. No payment on the Contract shall be due and payable to the Contractor until the bonds have been approved by the Owner.

- (b) For the purposes of all Standard Labor and Material Payment Bonds entered into, the term "subcontractors" as used in §2.2-4337 of the Code of Virginia is interpreted to mean any contractors who participated in the prosecution of the Work undertaken by the Contractor (referred to in § 2.2-4337. of the Code of Virginia as the "prime contractor"), whether such contractor had a direct contract with the Contractor (prime contractor) or whether there were one or more other intervening Subcontractors contractually positioned between it and the Contractor (prime contractor).
- (c) See §2.2-4338 of the Code of Virginia, for alternative forms of security for payment and/or performance bonds.
- (d) For contracts with a value of less than one hundred thousand dollars (\$100,000), the Contractor will not be required to provide a Standard Performance Bond and a Standard Labor and Material Payment Bond as described above unless the Invitation for Bid states that such bonds will be required.

## 8. SUBCONTRACTS

- (a) The Contractor shall, as soon as practicable after the signing of the Contract, notify the Owner and Engineer in writing of the names of all Subcontractors proposed for the principal parts of the Work and of such others as the Engineer may direct. Where the specifications establish qualifications or criteria for Subcontractors, manufacturers, or individuals performing Work on the Project, the Contractor shall be responsible for ascertaining that those proposed meet the criteria or qualifications. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object to as unsuitable. Neither the Owner nor the Engineer shall direct the Contractor to contract with any particular Subcontractor unless provided in the specifications or Invitation for Bids.
- (b) The Owner may select a particular Subcontractor for a certain part of the Work and designate on the Invitation for Bids that the Subcontractor shall be used for the part of the Work indicated and that the Subcontractor has agreed to perform the Work for the subcontract amount stipulated on the bid form. The Contractor shall include the stipulated amount plus his Contractor markups in the bid. In such case, the Contractor shall be responsible for that Subcontractor and its work and the Subcontractor shall be responsible to the Contractor for its work just as if the Contractor had selected the Subcontractor.
- (c) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values and Requests for Payment submitted by the Contractor and any other documentation submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.
- (d) The Contractor shall be fully responsible to the Owner for all acts and omissions of his agents and employees and all succeeding tiers of Subcontractors and Suppliers Performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or Engineer to pay for or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, except as may otherwise be required by law.

- (e) The Contractor shall be fully responsible for his invitees at the Site and for those of his Subcontractors, Suppliers, and their employees, including any acts or omissions of such invitees.
- (f) The Contractor agrees that he alone is responsible for all dealings with his Subcontractors and Suppliers, and their subcontractors, employees and invitees, including, but not limited to, the Subcontractors' or Suppliers' claims, demands, actions, disputes and similar matters unless specifically provided otherwise by the Contract or by statute.

## **9. SEPARATE CONTRACTS**

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

## **10. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE**

- (a) The Contractor shall not commence Work under this Contract until he has obtained all the insurance required hereunder from an insurer authorized to do business in Virginia and such insurance has been approved by the Owner; nor shall the Contractor allow any Subcontractor to commence Work on his subcontract until the same types of insurance in an appropriate amount have been obtained by the Subcontractor and approved by the Contractor. Approval of insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.
- (b) The Contractor shall take out and shall maintain at all times during the performance of the Work Workers' Compensation and Employers' Liability Insurance for all of his employees engaged in the Work in an amount not less than the minimum required by § 11-46.3 and § 65.2-100 et seq. of the Code of Virginia, and, in case any of the Work is sublet, the Contractor shall require each Subcontractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in the Work. The Contractor shall submit on the form provided by the Owner a Certificate of Coverage verifying Workers' Compensation coverage prior to award of the Contract. The Contractor shall likewise obtain a Certificate of Coverage for Workers' Compensation coverage from each subcontractor prior to awarding the subcontract and shall provide a copy to the Owner.

- (c) During the performance of the Work under this Contract, the Contractor shall maintain commercial general liability insurance to include Premises / Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability, and Personal Injury Liability, which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of general liability insurance shall be not less than \$2,000,000 per occurrence and \$4,000,000 aggregate combined limit. The Town of Blacksburg, its officers, employees and agents, shall be named as an additional insured with respect to the Work being procured.
- (d) During the performance of the Work under this Contract, the Contractor shall maintain automobile liability insurance which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of automobile insurance shall be not less than \$2,000,000 combined limit for bodily injury and property damage per occurrence.
- (e) The Asbestos Contractor or Subcontractor (if utilized), as the case may be, shall provide occurrence-based liability insurance with asbestos coverages in an amount not less than \$1,000,000 and shall name the following as additional insureds: The Town of Blacksburg, its officers, its employees and its agents; the Engineer (if not the Asbestos Project Designer); and the Contractor (where the asbestos work is being performed by the Asbestos Subcontractor).

## 11. BUILDER'S RISK INSURANCE

- a. The contractor, at his cost, shall obtain and maintain in the names of the owner and the contractor "Special Form Builders Risk Property Coverage All-Risk" builder's risk insurance (or fire, extended coverage, vandalism and malicious mischief insurance, if approved by the owner upon the entire structure or structures on which the work of this contract is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof. Such insurance may include a deductible provision if the owner so provides in the supplemental general conditions, in which case the contractor will be liable for such deductions, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the owner, in accordance with its interests, as they may appear. The owner, its officers, employees and its agents, shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with the owner no later than thirty (30) days following the award of the contract. In the event of cancellation of this insurance, not less than thirty (30) days prior written notice must be sent to the owner. A copy of the policy of insurance shall be given to the owner upon demand.
- b. The value of the builder's risk insurance shall exclude the costs of excavations, backfills, foundations, underground utilities and site work.
- c. Certain projects, such as renovations and interior modifications of existing buildings, may be covered by the owner's insurance and may not require the "builder's risk" insurance required by this section.

- d. Any insurance provided through the Town of Blacksburg for construction, additions or renovations will not extend to contractor's nor subcontractors' buildings, equipment, materials, tools or supplies unless these items are to become property of the owner upon completion of the project and the owner has assumed responsibility for such items at the time of the loss.

## **12. TAXES, FEES AND ASSESSMENTS**

The Contractor shall, without additional expense to the Owner, pay all applicable federal, state, and local taxes, fees, and assessments except the taxes, fees and assessments on the real property comprising the Site of the project.

## **13. PATENTS**

The Contractor shall obtain all licenses necessary to use any invention, article, appliance, process or technique of whatever kind and shall pay all royalties and license fees. The Contractor shall hold the Owner, its officers, agents and employees, harmless against any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the specifications or plans as acceptable for use in carrying out the Work. If, before using any invention, process, technique, article or appliance specifically named in the specifications or plans as acceptable for use in carrying out the Work, the Contractor has or acquires information that the same is covered by letters of patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall promptly advise the Owner and the Engineer. The Owner may direct that some other invention, process, technique, article or appliance be used. Should the Contractor have reason to believe that the invention, process, technique, article or appliance so specified is an infringement of a patent, and fail to inform the Owner and the Engineer, he shall be responsible for any loss or liability due to the infringement

## **14. ENGINEER'S STATUS**

- (a) The Engineer shall have authority to endeavor to secure the faithful performance by Owner and Contractor of the Work under the Contract. He shall review the Contractor's Submittals for conformance to the requirements of the Contract Documents and return copies to the Contractor with appropriate notations. He shall interpret the requirements of the plans and specifications and issue Field Orders to the Contractor as may be required. He shall recommend to the Owner suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Contract. He shall have authority to reject, in writing, Work, including material, installation or workmanship, which does not conform to the requirements of the plans and specifications. He shall determine the progress and quality of the Work, subject to the right of the Owner to make an overriding decision to the contrary. Upon request by the Contractor, the Engineer shall confirm, in writing within ten (10) days, any oral order or determination made by him.
- (b) The Engineer shall have no authority to approve or order changes in the Work which alter the design concept or which call for an extension of time or a change in the Contract Price.
- (c) Although the Owner is bound by the terms of the Contract with the Contractor, including the plans and specifications, the Owner shall have the right, but not the duty, to countermand any decision of the Engineer and to follow or reject the advice of the Engineer, including but not limited to

acceptance of the Work, as it deems best. In those instances, where the Engineer has been given authority to act, the Engineer shall promptly do so, but in the case of disagreement between the Engineer and the Owner, the decision of the Owner shall be final. The Contractor shall not be bound by any determination, interpretation or decision of the Engineer, if it is later determined that the same is not in accord with the Contract Documents. The party taking issue with the determination, interpretation or decision of the Engineer shall give the other party written notice of such fact within ten (10) days after the determination, interpretation or decision is communicated by the Engineer. In the actual performance of the Work, however, the Contractor shall, in the first instance, proceed in accordance with instructions given by the Engineer unless the Owner and the Contractor mutually agree that the Contractor shall proceed otherwise.

- (d) All orders from the Owner to the Contractor shall either be transmitted through the Engineer or communicated directly to the Contractor and the Architect/ Engineer by the Owner.
- (e) Should the Owner choose to employ another or different Engineer, the status of the Engineer so employed shall be the same as that of the former Engineer.
- (f) The Engineer will provide to the Owner and the Contractor after each visit to the Site, a written report indicating the date, time of day, weather conditions and the names of the persons representing the Engineer who participated in the visit. The report will advise the Owner of any problems that were noted and shall compare the Engineer's observations of the actual progress of the Work with that reported by the Contractor. On the basis of his on-Site observations as Engineer, he will make every reasonable effort to guard the Owner against defects and deficiencies in the Work of the Contractor. He shall have the authority to inspect the Work, to note and report Defective Work and deviations from the Contract Documents to the Owner, to reject same, and to recommend to the Owner the suspension of the Work when necessary to prevent Defective Work from proceeding or being covered.
- (g) The Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures (other than those expressly specified in Contract Documents), or for safety precautions and programs in connection with the Work, and he shall not be responsible for the Contractor's failure to carry out the Contractor's own responsibilities.
- (h) The Engineer generally conveys written decisions and notices to the Contractor through the Project Manager and shall generally receive information and Notices from the Contractor through the Project Manager unless otherwise agreed. The Owner may delegate from the Engineer to the Project Manager certain inspection, verification, acceptance, rejection, and administrative duties and authority, but any such delegation shall be in writing and a copy thereof provided to the Contractor.
- (i) The provisions of this section are included as information only to describe the relationship between the Owner, Engineer, and Contractor. No failure of the Engineer to act in accordance with this section shall relieve the Contractor from his obligations under the Contract or create any rights in favor of the Contractor.

## **15. INSPECTION**

- (a) All material and workmanship shall be subject to inspection, examination and testing by the Owner, the Engineer, the Project Inspector, authorized inspectors and authorized independent testing entities at any and all times during manufacture and/or construction. The Engineer and the Owner shall

have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the Site. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in these General Conditions with the Contractor and surety being liable for any damage to the same extent.

- (b) Site inspections, tests conducted on Site or tests of materials gathered on Site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast-in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. The Contractor shall promptly furnish, without additional charge, reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (d) below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual, AWWA or ASTM. If fees are charged for such tests and certifications, they shall be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or to pay, together with any inspections and tests which he chooses to perform for his own purposes, but are not required by the Contract.
- (c) Where Work is related to or dependent on the Defective Work, the Contractor shall stop such related or dependent Work until the Defective Work or deficiency is corrected or an alternative solution is presented that is satisfactory to the Owner. Where Work is rejected because of defective material or workmanship, the Contractor shall stop like Work in other areas or locations on the Project until the matter is resolved and the Owner has approved corrective measures.
- (d) Should it be considered necessary or advisable by Owner or the Engineer at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or his Subcontractors, the Contractor shall defray all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such Work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing, and Contractor's cost of material and labor necessary for replacement including a markup of fifteen (15%) percent for overhead and profit shall be paid to the Contractor and he shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time. Notwithstanding the foregoing, the Contractor shall be responsible for all costs and expenses in removing and replacing the Work if the Contractor had covered the Work prior to any inspection or test contrary to the instructions of the Engineer, Owner or Project Inspector.
- (e) The Project Inspector has the authority to recommend to the Engineer and the Owner that the Work be suspended when in his judgment the Contract Documents are not being followed. Any such

suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.

- (f) The Project Inspector has the right and the authority to:
  - (1) Inspect all construction materials, equipment, and supplies for quality and for compliance with the Contract Documents and/or approved shop drawings and Submittals.
  - (2) Inspect workmanship for compliance with the standards described in the Contract Documents.
  - (3) Observe and report on all tests and inspections performed by the Contractor.
  - (4) Recommend rejection of Work which does not conform to requirements of the Contract Documents.
  - (5) Keep a record of construction activities, tests, inspections, and reports.
  - (6) Attend all joint Site construction meetings and inspections held by the Owner and/or the Engineer with the Contractor.
  - (7) Check materials and equipment, together with documentation related thereto, delivered for conformance with approved Submittals and the Contract
  - (8) Check installations for proper workmanship and conformance with shop drawing and installation instructions.
  - (9) Assist in the review and verification of the Schedule of Values & Certificate for Payment, submitted by the Contractor each month.
  - (10) Do all things for or on behalf of the Owner as the Owner may subsequently direct in writing.
- (g) The Project Inspector has no authority to:
  - (1) Authorize deviations from the Contract Documents;
  - (2) Enter into the area of responsibility of the Contractor's superintendent;
  - (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work;
  - (4) Authorize or suggest that the Owner occupy the Project, in whole or in part; or
  - (5) Issue a certificate for payment.
- (h) The duties of the Project Inspector are for the benefit of the Owner only and not for the Contractor. The Contractor may not rely upon any act, statement, or failure to act on the part of the Project Inspector, nor shall the failure of the Project Inspector to properly perform his duties



in any way excuse Defective Work or otherwise improper performance of the Contract by the Contractor.

## **16. SUPERINTENDENCE BY CONTRACTOR**

- (a) The Contractor shall have a competent foreman or superintendent, satisfactory to the Engineer and the Owner, on the Site at all times during the progress of the Work. The superintendent or foreman shall be familiar with and be able to read and understand the plans and specifications, and be capable of communicating orally and in writing with the Owner's inspectors and the Contractor's workers. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Owner, in writing, of any proposed change in superintendent, including the reason therefor, prior to making such change.
- (b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Owner or the Owner's separate contractors and their subcontractors.
- (c) The Owner may, in writing, require the Contractor to remove from the Site any employee or Subcontractor's employee the Owner deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable, but the Owner shall have no obligation to do so.

## **17. CONSTRUCTION SUPERVISION, METHODS AND PROCEDURES**

- (a) The Contractor shall be solely responsible for supervising and directing 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. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work under the Contract, except where otherwise specified in the Contract Documents. However, the Contractor shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract. The Contractor is solely responsible to the Owner that the finished Work complies with the Contract Documents.

The Contractor shall be solely responsible for health and safety precautions and programs for workers and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Engineer, the Project Inspector, the Owner, the Owner's employees and agents, or any other entity whatever shall relieve the Contractor from its sole responsibility for compliance with the requirements of the Contract or its sole responsibility for health and safety programs and precautions.

- (b) If a specific means, method, technique. Sequence or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to Engineer, subject to the Owner's right to disapprove. The Contractor must submit its written request for the substitution to

the Engineer with sufficient information to allow the Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract.

- (c) The divisions and sections of the Specifications and the identification of any drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

## **18. SCHEDULE OF THE WORK**

- (a) General: The Contractor is responsible for the scheduling and sequencing of the Work, for coordinating the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date established by the Contract and receive payment for the Work completed each period. However, the date established by the Contract Documents as the deadline for achieving Substantial Completion must be used in all schedules as the date on which Substantial Completion will be achieved. The time (in days) between the Contractor's planned early completion and the contracted Time for Completion is part of the Project "Total Float" time and will be used as such. Extensions of time, damages for delay, and all other matters between the Owner and the Contractor will be determined using the contractually required Substantial Completion date, not an early Substantial Completion date planned by the Contractor.

Within two (2) weeks after the Contractor signs the Contract between Owner and Contractor, unless otherwise extended by the Owner at the time of the signing, the Contractor shall prepare and submit to the Owner, with a copy to the Engineer, a preliminary bar graph schedule for accomplishing the Work based upon the Time for Completion stated in the Contract. The preliminary bar graph schedule shall be in sufficient detail to show the sequencing of the various trades for each floor level, wing or work area. The Owner will notify the Contractor of its acceptance of or objections to the preliminary schedule within fifteen (15) days of receipt by the Owner. A fully complete Project schedule for accomplishing the Work must be submitted in like manner no later than sixty (60) days after the Contract is signed by the Owner.

The Owner's failure to reject or its acceptance of any schedule, graph, chart, recovery schedule, updated schedule, plan of action, etc. shall not constitute a representation or warranty by the Owner, including but not limited to a representation or warranty that the schedule is feasible or practical nor shall any such acceptance or failure to reject relieve the Contractor from sole responsibility for completing the Work within the time allowed.

No progress payments will be payable to the Contractor until after it has submitted a preliminary schedule which is acceptable to the Owner. Neither the second progress payment nor any subsequent payment shall be payable to the Contractor until it has submitted a fully complete Project schedule accepted by the Owner. Nor shall subsequent progress payments be payable to the Contractor unless and until he maintains the monthly bar graphs or status reports or unless and until he provides any recovery schedule.

Failure to provide a satisfactory preliminary or fully complete Project schedule within the time limits stated above shall be a breach of contract for which the Owner may terminate the Contract in the manner provided in these General Conditions.

The fully complete Project schedule for accomplishing the Work shall be of the type set forth in subparagraph (1) or (2) below, as appropriate:

- (1) For Contracts with a price of \$1,500,000 or less, a bar graph schedule will satisfy the above requirement. The schedule shall indicate the estimated starting and completion dates for each major element of the work. See (b) below.
- (2) For Contracts with a price over \$1,500,000, a Critical Path Method (CPM) schedule shall be utilized to control the planning and scheduling of the Work. The CPM schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor. See (c) below.

- (b) **Bar Graph Schedule:** Where a bar graph schedule is required, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the Work by trade and by area, level, or zone, and shall schedule dates for all salient features, including but not limited to the placing of orders for materials, submission of shop drawings and other Submittals for approval, approval of shop drawings by Engineer, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by the Contractor.

The Contractor shall allow sufficient time in his schedule for the Engineer to conduct whatever associated reviews or inspections as may be required under the Engineer's contract with the Owner. If the Engineer and the Contractor are unable to agree as to what constitutes sufficient time, the Owner shall determine the appropriate duration for such Engineer activities. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

- (c) **CPM Schedule:** Where a CPM schedule is required, it shall be in the time-scaled precedence format using the Contractor's logic and time estimates. The CPM schedule shall be drawn or plotted with activities grouped or zoned by Work area or subcontract as opposed to a random (or scattered) format.

The CPM schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features of the Work, including not only the actual construction Work for each trade, but also the submission of shop drawings and other Submittals for approval, approval of shop drawings by Engineer, placing of orders for materials, the manufacture and delivery of materials, the testing and installation of materials and equipment, and all Work activities to be performed by the Contractor. Failure to include any element of Work required for the performance of this Contract shall not excuse the Contractor from completing all Work required within the Time for Completion, Contract Completion Date and any interim deadlines established by the Contract.

The Contractor shall allow sufficient time in his schedule for the Engineer to conduct whatever associated reviews or inspections as may be required under the Engineer's contract with the Owner. If the Engineer and the Contractor are unable to agree as to what constitutes sufficient time, the

Owner shall determine the appropriate duration for such Engineer activities. Each Work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

It is the Contractor's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Time for Completion or the Contract Completion Date and any interim deadlines established by the Contract.

When completed, the CPM schedule shall be submitted to the Engineer and the Owner for review. The CPM schedule will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float" shall be indicated for all activities. Float time, whether "free float" or "total float", shall not be considered for the exclusive use or benefit of either the Owner or the Contractor, but must be allocated in the best interest of completing the Work within the Time for Completion or the Contract Completion Date. Extensions to the Time for Completion or the Contract Completion Date, when granted by Change Order, will be granted only when equitable time adjustment exceeds the Total Float in the activity or path of activities affected by the change. On contracts with a price over \$5,000,000, the CPM schedule shall also show what part of the Contract Price (expressed in U.S. dollars) is attributable to each activity on the schedule, the sum of which for all activities shall equal the total Contract Price. On contracts with a price over \$10,000,000, the CPM schedule shall also show the planned workforce (crew size and number of crews) and the major pieces of equipment required for each activity on the schedule. When acceptable to the Owner and Engineer as to compliance with the requirements of this Section, but not as to logic, the schedule shall become the CPM schedule for the Project. Acceptance of the schedule by the Owner does not indicate agreement with no responsibility for the proposed or actual duration of any activity shown on the accepted schedule.

- (d) **Monthly Project Reports:** The Contractor shall review progress not less than each month, but as often as necessary to properly manage the Project and stay on schedule. The Contractor shall collect and preserve information on Change Orders, including extensions of time. The Contractor shall evaluate this information and update the latest accepted schedule as often as necessary to finish within the Contract Time for Completion or before the Contract Completion Date. The Contractor shall submit to the Engineer along with his monthly request for payment a copy of the bar graph schedule annotated to show the current progress. For projects requiring a CPM schedule, the Contractor shall submit a monthly report of the status of all activities. The bar graph schedule or monthly status report submitted with each periodic request for payment shall show the Work completed to date in comparison with the Work scheduled for completion, including but not limited to the dates for the beginning and completion of the placing of orders; the manufacture, testing and installation of materials, supplies and equipment. The form shall be approved by the Engineer and the Owner; however, a bar graph or a CPM schedule marked, colored or annotated to reflect the above will usually satisfy this requirement. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor must indicate in writing in the report what measures he is taking and plans to take to bring each such element back on schedule and to ensure that the Time for Completion or Contract Completion Date is not exceeded.
- (e) **Progress Delay:** Should any of the following conditions exist, the Owner may require the Contractor to prepare, at no extra cost to the Owner, a plan of action and a recovery schedule for completing the Work by the Contract Time for Completion or the Contract Completion Date:

- (1) The Contractor's monthly progress report indicates delays that are, in the opinion of the Engineer or the Owner, of sufficient magnitude that the Contractor's ability to complete the Work by the scheduled Time for Completion or the Contract Completion Date is brought into question;
- (2) The CPM schedule sorted by early finish shows the Contractor to be thirty (30) or more days behind the critical path schedule at any time during construction up to thirty (30) days prior to scheduled Substantial Completion date;
- (3) The Contractor desires to make changes in the logic (sequencing of Work) or the planned duration of future activities of the CPM schedule which, in the opinion of the Engineer or the Owner, are of a major nature.

The plan of action and recovery schedule, when required, shall explain and display how the Contractor intends to regain compliance with the current accepted, fully completed, Project CPM schedule, as updated by approved change orders.

The plan of action, when required, shall be submitted to the Owner for review within two (2) business days of the Contractor receiving the Owner's written demand. The recovery schedule, when required, shall be submitted to the Owner within five (5) calendar days of the Contractor's receiving the Owner's written demand.

- (f) **Early Completion of Project:** The Contractor may attempt to achieve Substantial Completion on or before the Time for Completion or the Contract Completion Date. However, such planned early completion shall be for the Contractor's convenience only and shall not create any additional rights of the Contractor or obligations of the Owner under this Contract, nor shall it change the Time for Completion or the Contract Completion Date. The Contractor shall not be required to pay damages to the Owner because of its failure to achieve Substantial Completion by its planned earlier date. Likewise, the Owner shall not pay the Contractor any additional compensation for achieving Substantial Completion early nor will the Owner owe the Contractor any compensation should the Owner, its officers, employees, or agents cause the Contractor not to achieve Substantial Completion earlier than the date required by the Contract Documents.

If the Contractor seeks to change the Time for Completion or the Contract Completion Date to reflect an earlier completion date, he may request or propose such a change. The Owner may, but is not required to, accept such proposal. However, a change in the Time for Completion or the Contract Completion Date shall be accomplished only by Change Order. If the Contractor's proposal to change the Time for Completion or the Contract Completion Date is accepted, a Change Order will be issued stating that all references in the Contract, including these General Conditions, to the Time for Completion or the Contract Completion Date shall thereafter refer to the date as modified, and all rights and obligations, including the Contractor's liability for actual damages, delay damages and/or liquidated damages, shall be determined in relation to the date, as modified.

## 19. SCHEDULE OF VALUES AND CERTIFICATE FOR PAYMENT

- (a) Before submittal of the first partial payment request under the Contract, the Contractor shall prepare for review and approval of the Engineer and the Owner, a schedule of the estimated values listed by trades or by specification sections of the Work, totaling the Contract Price. Where the

total project has multiple parts or phases, the Contractor shall prepare appropriate schedules of values to facilitate reviews and justifications for payments.

All requests for payment shall be made on the Schedule of Values and Certificate for Payment. Succeeding pages may be on the continuation sheets or a computerized spreadsheet which is in the same format and which contains the same information. Where a computerized spreadsheet is used, one copy of the entire Schedule of Values shall be provided to the Owner on disc in a spreadsheet format with the initial request for payment.

- (b) If the Contractor requests, or intends to request, payment for materials stored in an approved and secure manner, the Schedule of Values must indicate the amount for labor and the amount for materials, and in a supplement thereto must include an itemized list of materials for that trade or Work section. The material breakdown shall be in sufficient detail to allow verification of the quantities required for the Project, the quantities delivered, the Work completed and the quantities stored on or off Site.
- (c) The "Value of Work Completed" portion of the Form shall be completed, the Contractor's certification completed and signed, and the appropriate substantiating material attached to each Certificate for Payment. Such substantiating material includes, but is not limited to, invoices for materials, delivery tickets, time sheets, payroll records, daily job logs/records, and similar materials which, in the opinion of the Owner and the Engineer, are necessary or sufficient to justify payment of the amount requested.
- (d) The labor progress for any task or activity shall be calculated based upon the percentage of Work complete up to fifty percent (50%) of the completion of the task or activity. Thereafter, the evaluation of labor progress will be based upon the effort required to complete that task or activity. The material progress shall be calculated as the invoiced dollar cost of materials used in relationship to the amount estimated as necessary to complete a particular element of Work. When calculating material progress, credit shall be given for installed material as well as that stored on the Site and any material stored off Site which has been certified by the Engineer.
- (e) Should Work included in previous submittals, and for which payment has been made, subsequently be identified, by tests, inspection, or other means, as not acceptable or not conforming to Contract requirements, the "Value of Work Completed" portion of the first Form submitted after such identification shall be modified to reduce the "completed" value of that Work by deleting the value of that which has been identified as not acceptable or nonconforming.

## **20. ACCESS TO WORK**

The Engineer, the Owner, the Project Manager, the Owner's inspectors and other testing personnel, other inspectors and others authorized by the Owner, shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

## **21. SURVEYS AND LAYOUT**

- (a) The Owner shall furnish the Contractor all necessary documents showing property lines and the location of existing buildings and improvements. The Contractor shall provide competent surveying and engineering services to execute the Work in accordance with the Contract and shall be responsible for the accuracy of these surveying and engineering services.

- (b) Such general reference points and benchmarks on the Site as will enable the Contractor to proceed with the Work will be established in the plans and specifications. If the Contractor finds that any previously established reference points have been lost or destroyed, he shall promptly notify the Engineer.
- (c) The Contractor shall protect and preserve the established benchmarks and monuments and shall make no changes in locations without written notice to the Engineer and the written approval from the Owner. Any of these which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior written approval of the Owner, be replaced and accurately located by the Contractor.

## **22. PLANS AND SPECIFICATIONS**

- (a) The general character and scope of the Work are illustrated by the plans and the specifications. If the Contractor deems additional detail or information to be needed, he may request the same in writing from the Engineer. His request shall precisely state the detail or information needed and shall explain why it is needed. The Contractor shall also indicate a date when the requested information is required. The Engineer shall provide by Field Order such further detail and information as is necessary by the date required so long as the date indicated is reasonable. Any additional drawings and instructions supplied to the Contractor shall be consistent with the Contract Documents, shall be true developments thereof, and shall be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.
- (b) If the Contractor finds a conflict, error, or other discrepancy in the plans or specifications, he shall notify the Engineer in writing as soon as possible, but before proceeding with the affected Work. The Engineer shall issue a clarification by Field Order to the Contractor stating the correct requirements. If the Contractor deems the Field Order requires additional Work, he shall notify the Engineer of such prior to proceeding with that Work and he shall submit a request for Change Order along with a detailed substantiating cost proposal thru the Engineer to the Owner within ten (10) calendar days.
- (c) In case of differences between small and large scale drawings, the large scale drawings shall govern. Where on any of the drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work.
- (d) Where the word "similar" appears on the drawings, it shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection with other parts of the Work.
- (e) The specifications are divided into several parts, or sections, for convenience only, since the entire specifications must be considered as a whole. The divisions of the specifications are not intended to control the Contractor in dividing the Work among Subcontractors or to limit the Work performed by any trade. The Contractor shall be solely responsible for the coordination of the trades, Subcontractors and vendors engaged in the Work.
- (f) Measurements or dimensions shown on the drawings for Site features, utilities and structures shall be verified at the Site by the Contractor. The Contractor shall not scale measurements or

dimensions from the drawings. If there are discrepancies, the Engineer shall be consulted. If new Work is to connect to, match with or be provided in existing Work, the Contractor shall verify the actual existing conditions and necessary dimensions prior to ordering or fabrication.

- (g) **As-Built Drawings:** The Contractor shall maintain at the Site for the Owner one copy of all drawings, specifications, addenda, approved shop or setting drawings, Change Orders and other modifications (collectively referred to herein as "As-Built Drawings") in good order and marked to record all changes as they occur during construction. These shall be available to the Engineer, the Owner, the Project Inspector, the Owner's other inspectors and to the Owner's testing personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction. The representation of such variations shall include such supplementary notes, symbols, legends, and details as may be necessary to clearly show the as-built construction.
- (h) **Record Drawings:** Upon completion of the Work and prior to the final inspection, the Contractor shall deliver to the Engineer, for preparation of the Record Drawings, one complete set of "As-Built Drawings" referred to in the preceding subsection.

### **23. SUBMITTALS**

- (a) The Contractor shall submit a listing of all Submittals required by the Engineer or which the Contractor identifies as necessary, fixing the dates for the submission of shop or setting drawings, samples and product data. The listing shall be in a format acceptable to the Engineer. The Contractor shall identify all Submittals with the Owner's Number.
- (b) Submittals shall be forwarded to the Engineer for approval if required by the specifications or if requested by the Engineer or the Owner. No part of the Work dealt with by a Submittal shall be fabricated by the Contractor, save at his own risk, until such approval has been given.
- (c) The Contractor shall furnish to the Engineer for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the Work. When Submittals are required by this Contract for materials, the Contractor shall furnish full information concerning the material or articles which he contemplates incorporating in the Work. When required, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval shall be at the risk of subsequent rejection.
- (d) Unless otherwise indicated or required elsewhere in the specifications, shop drawings shall be submitted in the form of one reproducible tracing and three blue line or black line prints. Catalog cuts, product data and other non-reproducible literature, except certificates, shall be submitted in six (6) copies minimum, of which three (3) will be retained by the Engineer and the remainder will be returned to the Contractor.
- (e) Submittals shall be accompanied by a letter of transmittal which shall list the Project Code Number, the Submittals included, the specification section number applicable to each, and the date shown on each Submittal. Submittals shall be complete in every respect and bound in sets. Each Submittal shall be clearly marked to show each item, component and/or optional feature proposed to be incorporated into the Project. Cross reference to the plans or specifications as needed to identify the use for which the item or component is intended.



- (f) The Contractor shall check the Submittals for compliance with the requirements of the Contract Documents. The Contractor shall clearly note in writing any and all items which deviate from the requirements of the Contract Documents. Reasons for deviation shall be included with the Submittal. The Contractor shall be solely responsible for checking all dimensions and coordinating all materials and trades to ensure that the components or products proposed, individually or in combination, will fit in the space available and that they will be compatible with other components or products provided.
- (g) After checking each submittal, the Contractor shall stamp each sheet of the Submittal with the Contractor's review stamp. Data submitted in a bound volume or on one sheet printed on two sides, may be stamped on the front of the first sheet only. The Contractor's review stamp shall be worded as follows:

The equipment and material shown and marked in this submittal is that proposed to be incorporated into this Project, is in compliance with the Contract drawings and specifications unless otherwise shown in bold face type or lettering and listed on a page or pages headed "DEPARTURES FROM DRAWINGS AND SPECIFICATIONS", and can be installed in the allocated spaces.

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

The person signing the review stamp shall be the person designated in writing by the Contractor as having that authority. (A copy of such designation shall be forwarded to the Engineer prior to or with the first Submittal.) The signature on the stamped review statement shall be handwritten in ink. Stamped signatures are not acceptable.

- (h) The Contractor shall forward all Submittals sufficiently in advance of construction requirements to allow reasonable time for checking, correcting, resubmitting and rechecking.
- (i) If a Submittal indicates a departure from the Contract requirements, the Engineer may reject the Submittal or, if he deems it to have merit, may recommend it to the Owner, who shall approve or reject it as the Owner, in its sole discretion, sees fit. The departure from the Contract requirements shall be further authorized by a Change Order, if a reduction or increase in the Contract Price is appropriate.
- (j) The Engineer is responsible to the Owner, but not to the Contractor, to verify that the Submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in Submittals are of the quality specified and will function properly, and that the Submittals comply with the Contract Documents.
- (k) The Work shall be in accordance with approved Submittals. Approval of the Contractor's Submittals by the Engineer does not relieve the Contractor from responsibility of complying with the Contract and all drawings and specifications, except as changed by Change Order.

- (l) The plans and/or specifications may indicate that the Engineer designed or detailed a portion of the plans around a particular product (most commonly a piece of equipment). Should a different product be proposed by the Contractor and accepted, all modifications, rerouting, relocations and variations required for proper installation and coordination to comply with the design concept and requirements of the Contract Documents shall be the responsibility of the Contractor and shall be made at no extra cost to the Owner. If the plans were noted as designed or detailed around a particular product and/or if a product is named when a "brand name or equal" specification has been used, this is not intended to favor or preclude the use of other products. Rather such design merely acknowledges the reality that in many instances the Engineer must have a basis to design and detail around for dimensions and characteristics of a product or system.
- (m) Additional Submittal requirements are shown in the specifications.

## 24. FEES, SERVICES AND FACILITIES

- (a) The Contractor shall obtain all permits, and pay for all fees and charges necessary for temporary access and public right-of-way blockage or use, for temporary connections to utilities and for the use of property (other than the Site) for storage of materials and other purposes unless otherwise specifically stated in the Contract Documents.
- (b) Certain projects such as renovations and interior modifications of existing buildings will usually have water and electric service to the building. In those instances, water and electric power, if required for the Work under the Contract, will be furnished by the Owner subject to reasonable use by the Contractor, only to the extent and capacity of present services. The Contractor shall be responsible for providing required connections, temporary wiring, piping, etc. to these services in a safe manner and in accordance with applicable codes. All temporary wire, pipe, etc. shall be removed before the Substantial Completion inspection. Acceptance by the Contractor of the use of Owner's water and electricity constitutes a release to the Owner of all claims and of all liability to the Contractor for whatever damages which may result from power and water outages or voltage variations.
- (c) The Owner shall pay any connection charges for permanent utility connections directly to the utility Supplier. The Contractor shall coordinate such connections with the utility Supplier.
- (d) It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor, either directly or through his Subcontractors, shall provide and pay for all material, labor, tools, equipment, water, light, power, telephone and other services or facilities of every nature whatsoever necessary to execute completely and deliver the Work within the Contract Time for Completion or before the Contract Completion Date.

## 25. EQUALS

- (a) **Brand names:** Unless otherwise stated in the specifications, the name of a certain brand, make or manufacturer denotes the characteristics, quality, workmanship, economy of operation and suitability for the intended purpose of the article desired, but does not restrict the Contractor to the specific brand, make, or manufacturer; it is set forth to convey to the Contractor the general style, type, character and quality of the article specified.

- (b) **Equal materials, equipment or assemblies:** Whenever in these Contract Documents, a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded merely as a standard. Any other brand, make or manufacturer of a product, assembly or equipment which in the opinion of the Engineer is the equal of that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work, and suitability for the intended purpose, will be accepted unless rejected by the Owner as not being equal.
- (c) **Substitute materials, equipment or assemblies:** The Contractor may propose to substitute a material, product, equipment, or assembly which deviates from the requirements of the Contract Documents but which the Contractor deems will perform the same function and have equal capabilities, service life, economy of operations, and suitability for the intended purpose. The proposal must include any cost differentials proposed. The Owner will have the Engineer provide an initial evaluation of such proposed substitutes and provide a recommendation on acceptability and indicate the Engineer's redesign fee to incorporate the substitution in the design. If the proposed substitute is acceptable to the Owner, a Change Order will be proposed to the Contractor to accept the substitute and to deduct the cost of the Engineer redesign fee and the proposed cost savings from the Contract Price. The Owner shall have the right to limit or reject substitutions at its sole discretion.
- (d) The Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equal or substitute product which it uses. The necessary changes shall be made at the Contractor's expense.

## 26. AVAILABILITY OF MATERIALS

If a brand name, product, or model number included in the Contract Documents is not available on the present market, alternate equal products or model numbers may be proposed by the Contractor through the Engineer for approval by the Owner.

## 27. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the Work shall be purchased by the Contractor, or by any Subcontractor or Supplier, subject to any security interest, installment or sales contract or any other agreement or lien by which an interest is retained by the seller or is given to a secured party. The Contractor warrants that he has clear and good title to all materials and supplies which he uses in the Work or for which he accepts payment in whole or in part.

## 28. STANDARDS FOR MATERIALS INSTALLATION AND WORKMANSHIP

- (a) Unless otherwise specifically provided in the Contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition.
- (b) Unless specifically approved by the Owner or required by the Contract, the Contractor shall not incorporate into the Work any materials containing asbestos or any material known by the industry to be hazardous to the health of building construction workers, maintenance workers, or occupants. If the Contractor becomes aware that a material required by the Contract contains asbestos or other

hazardous materials, he shall notify the Owner and the Engineer immediately and shall take no further steps to acquire or install any such material without first obtaining Owner approval.

- (c) All workmanship shall be of the highest quality found in the industry in every respect. All items of Work shall be done by craftsmen or tradesmen skilled in the particular task or activity to which they are assigned. In the acceptance or rejection of Work, no allowance will be made for lack of skill on the part of workmen. Poor or inferior workmanship (as determined by the Engineer, the Owner or other inspecting authorities) shall be removed and replaced at Contractor's expense such that the Work conforms to the highest quality standards of the trades concerned, or otherwise corrected to the satisfaction of the Engineer, the Owner, or other inspecting authority, as applicable.
- (d) Under the various sections of the plans or specifications, where specified items are supplied with the manufacturer's printed instructions, recommendations, or directions for installation, or where such instructions, recommendations, or directions are available, installation of the specified items shall be in strict accordance with the manufacturer's printed instructions unless those instructions contradict the plans or specifications, in which case the Engineer will be notified for an interpretation and decision.
- (e) Under the various sections of the plans or specifications, where reference is made to specific codes or standards governing the installation of specified items, installation shall in all cases be in strict accordance with the referenced codes and standards. Where no reference is made to specific codes or standards, installation shall conform to the generally recognized applicable standards for first-class installation of the specific item to be installed. Contractors are expected to be proficient and skilled in their respective trades and knowledgeable of the Codes and Standards of the National Fire Protection Association (NFPA), National Electric Code (NEC), Occupational Safety and Health Act (OSHA) and other codes and standards applicable to installations and associated work by his trade.
- (f) Where the manufacturer's printed instructions are not available for installation of specific items, where specific codes or standards are not referenced to govern the installation or specific items, or where there is uncertainty on the part of the Contractor concerning the installation procedures to be followed or the quality of workmanship to be maintained in the installation of specific items, the Contractor shall consult the Engineer for approval of the installation procedures or the specific standards governing the quality of workmanship the Contractor proposes to follow or maintain during the installation of the items in question.
- (g) During and/or at the completion of installation of any items, the tests designated in the plans or specifications necessary to assure proper and satisfactory functioning for its intended purpose shall be performed by the Contractor or by its Subcontractor responsible for the completed installation. All costs for such testing are to be included in the Contract Price. If required by the Contract Documents, the Contractor shall furnish prior to final inspection the manufacturers' certificates evidencing that products meet or exceed applicable performance, warranty and other requirements, and certificates that products have been properly installed and tested.

## **29. WARRANTY OF MATERIALS AND WORKMANSHIP**

- (a) The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be of the highest

quality and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades.

- (b) Work not conforming to these warranties shall be considered defective.
- (c) This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in the Contract or under Virginia law.

### **30. USE OF SITE AND REMOVAL OF DEBRIS**

- (a) The Contractor shall:
  - (1) Perform the Work in such a manner as not to interrupt or interfere with the operation of any existing activity on, or in proximity to, the Site or with the Work of any other separate contractor,
    - (2) Store his apparatus, materials, supplies and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of his Work or the work of any other separate contractor, and
  - (3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.
- (b) The Contractor expressly undertakes, either directly or through his Subcontractor(s), to effect all cutting, filling or patching of the Work required to make the same conform to the plans and specifications, and, except with the consent of the Engineer, not to cut or otherwise alter the Work of any other separate contractor. The Contractor shall not damage or endanger any portion of the Work or Site, including existing improvements, unless called for by the Contract.
- (c) The Contractor expressly undertakes, either directly or through his Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the Site shall present a neat, orderly and workmanlike appearance. No such refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the building Site, but shall be removed from the Site and properly disposed of at the Montgomery County Regional Landfill or otherwise as required by law.
- (d) The Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment or such prior time as the Owner may require, to remove all surplus material, false Work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the Site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to clean thoroughly all glass installed under the Contract, including other defacements. If the Contractor fails to clean up in the time required, the Owner may do so and charge the costs incurred thereby to the Contractor.
- (e) The Contractor shall prevent Site soil erosion, the runoff of silt and/or debris carrying water from the Site, and the blowing of debris off the Site in accordance with the applicable requirements and standards of the Contract and the Virginia Department of Conservation and Recreation's Erosion and Sediment Control Regulations and the Virginia Stormwater Management Regulations.

### **31. TEMPORARY ROADS**

Temporary roads, if required, shall be established and maintained until permanent roads are accepted, then removed and the area restored to the conditions required by the Contract Documents. Crushed rock, paving and other road materials from temporary roads shall not be left on the Site unless permission is received from the Owner to bury the same at a location and depth approved by the Owner.

### **32. SIGNS**

The Contractor may, at his option and without cost to the Owner, erect signs acceptable to the Owner on the Site for the purpose of identifying and giving directions to the job. No signs shall be erected without prior approval of the Owner as to design and location.

### **33. PROTECTION OF PERSONS AND PROPERTY**

- (a) The Contractor expressly undertakes, both directly and through his Subcontractors, to take every reasonable precaution at all times for the protection of all persons and property which may come on the Site or be affected by the Contractor's Work.
- (b) The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- (c) The provisions of all rules and regulations governing health and safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia, shall apply to all Work under this Contract.
- (d) The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except as may be directly and solely due to errors in the Contract Documents or caused by agents or employees of the Owner. The Contractor shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection as required by public authority, local conditions, or the Contract.
- (e) In an emergency affecting the health, safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Engineer or the Owner, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the Engineer or the Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided in these General Conditions.
- (f) When necessary for the proper protection of the Work, temporary heating of a type approved by the Engineer must be provided by the Contractor, at the Contractor's expense, unless otherwise specified.

### **34. CLIMATIC CONDITIONS**

The Contractor shall suspend activity on and protect any portion of the Work that may be subject to damage by climatic conditions.

### **35. PAYMENTS TO CONTRACTOR**

- (a) Unless otherwise provided in the Contract, the Owner will make partial payments to the Contractor on the basis of a duly certified and approved Schedule of Values and Certificate for Payment, showing the estimate of the Work performed during the preceding calendar month or work period, as recommended by the Engineer. When evaluating the Contractor's Form, the Engineer will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work on the critical path with regard to the Time for Completion, and the estimated value of the Work necessary to achieve Final Completion. The Engineer will schedule a monthly pay meeting to occur no earlier than the 25th day of the month represented by the payment request or not later than the 5th day of the following month. The Contractor will submit his monthly estimate of Work so that it is received by the Engineer and the Owner's Project Manager at least one work day prior to the date scheduled by the Engineer for the monthly pay meeting. The Owner will review the estimate with the Engineer and the Contractor at the monthly pay meeting, which shall be considered the receipt date, and may approve any or all of the estimate of Work for payment. In preparing estimates, the material delivered to the Site and preparatory Work done shall be taken into consideration, if properly documented as required, or as may be required by the Engineer so that quantities may be verified. In addition to material delivered to the Site, material such as large pieces of equipment and items purchased specifically for the Project, but stored off the Site within the Town of Blacksburg, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested.
- (1) The Contractor must notify the Owner in writing, at least ten (10) days prior to the submission of the payment request, through the Engineer, that specific items will be stored off Site in a designated, secured place within the Town. The Schedule of Values must be detailed to indicate separately both the value of the material and the labor/installation for trades requesting payment for stored materials. By giving such notification and by requesting payment for material stored off Site, the Contractor warrants that the storage location is safe and suitable for the type of material stored and that the materials are identified as being the property of the Contractor, and agrees that loss of materials stored off the Site shall not relieve the Contractor of the obligation to timely furnish these types and quantities of materials for the Project and meet the Time for Completion or Contract Completion Date, subject to these General Conditions. If the storage location is more than 20 miles from the Site, the Contractor may be required to reimburse the Owner for the cost incurred for travel to the storage location to verify the Contractor's request for payment for materials stored off Site.
- (2) Such notification, as well as the payment request, shall:
- (a) itemize the quantity of such materials and document with invoices showing the cost of said materials,
- (b) indicate the identification markings used on the materials, which shall clearly reference the materials to the particular project;

- (c) identify the specific location of the materials, which must be within reasonable proximity to the Site and the Town of Blacksburg;
  - (d) include a letter from the Contractor's Surety which confirms that the Surety on the Performance Bond and the Labor and Material Payment Bond has been notified of the request for payment of materials stored off the Site and agrees that the materials are covered by the bond; and
  - (e) include a certificate of all-risk builder's risk insurance in an amount not less than the fair market value of the materials, which shall name the Owner and the Contractor as co-insureds.
- (3) The Engineer shall indicate, in writing, to the Owner that Submittals for such materials have been reviewed and meet the requirements of the Contract Documents, that the stored materials meet the requirement of the plans and specifications, and that such materials conform to the approved Submittals. Should the Engineer deem it necessary to visit the storage site to make such review, the Contractor shall bear the costs incurred therewith.
- (4) The Owner, through the Engineer, shall notify the Contractor in writing of its agreement to prepayment for materials.
- (5) The Contractor shall notify the Owner in writing, through the Engineer, when the materials are to be transferred to the Site and when the materials are received at the Site.
- (a) Payment will not be made for materials or equipment stored on or off the Site which are not scheduled for incorporation into the Work within the six months next following submission of the request for payment, unless the Contractor has the prior consent of the Owner, which consent may be granted or withheld by the Owner in its discretion if, in the opinion of the Owner, it is not necessary to procure the materials more than six months in advance of use to assure their availability when needed..
  - (b) No payment shall be made to the Contractor until the Contractor furnishes to the Owner its Social Security Number (SSN) if an individual, or its Federal Employer Identification Number (FEIN) if a proprietorship, partnership, corporation or other legal entity. No payment shall be made to the Contractor until Certificates of Insurance or other satisfactory evidence of compliance by the Contractor with all the requirements of these General Conditions have been delivered to the Owner. Further, no payments on the basis of Work performed by a Subcontractor shall be paid by the Owner until copies of any certificates of insurance required of the Subcontractor have been delivered to the Owner.
  - (c) In making such partial payments, five percent (5%) of each payment to the Contractor shall be retained until Final Completion and acceptance of all Work covered by the Contract, unless otherwise provided by any law, regulation or program of the federal government. Such retainage shall be held to assure faithful performance of the Contract and may also be used as a fund to deduct amounts due to or claimed by the Owner, including, but not limited to, payment to the Owner of all moneys due for deductive change orders, credits, uncorrected Defective Work, interest, damages, and the like. (§ 2.2-4333 of the Code of Virginia)



- (d) All material and Work for which partial payments are made shall thereupon become the sole property of the Owner, but this provision shall not relieve the Contractor from the sole responsibility for all materials and Work, including those for which payment has been made, or for the restoration of any damaged materials or Work. Nor shall this provision serve as a waiver of the right of the Owner to require the fulfillment of all of the terms and conditions of the Contract.
- (e) The final payment, which shall include the retainage, less any amounts due to or claimed by the Owner, shall not become due until the Engineer and the Owner agree that Final Completion has been achieved and until the Contractor shall deliver to the Owner through the Engineer a Certificate of Completion by the Contractor and an Affidavit of Payment of Claims, stating that all Subcontractors and Suppliers of either labor or materials have been paid all sums claimed by them for Work performed or materials furnished in connection with this Project less retainage. Amounts due the Owner which may be withheld from the final payment may include, but are not limited to, amounts due to costs incurred to repair or replace Defective Work, costs incurred as a result of the Contractor's negligent acts or omissions or omissions of those for whom the Contractor is responsible, and any liquidated damages. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, the Contractor shall list each to which an agreed amount of money is due or which has a claim in dispute. With respect to all such Subcontractors and Suppliers, the Contractor shall provide to the Owner, along with the Affidavit of Payment of Claims, an affidavit from each such Subcontractor and Supplier stating the amount of their subcontract or supply contract, the percentage of completion, the amounts paid to them by the Contractor and the dates of payment, the amount of money still due if any, any interest due the Subcontractor or Supplier, and whether satisfactory arrangements have been made for the payment of said amounts. If no agreement can be reached between the Contractor and one or more Subcontractors or Suppliers as to the amounts owed to the Subcontractors or Suppliers, the Owner may, in its discretion, pay such portion of the moneys due to the Contractor which is claimed by the Subcontractor or Supplier into a Virginia Court or Federal Court sitting in Virginia, in the manner provided by law. Said payment into court shall be deemed a payment to the Contractor. Nothing in this Section shall be construed as creating any obligation or contractual relationship between the Owner and any Subcontractor or Supplier, and the Owner shall not be liable to any Subcontractor or Supplier on account of any failure or delay of the Owner in complying with the terms hereof.
- (f) Upon successful completion of the final inspection and all Work required by the Contract, including but not limited to the delivery of As-Built drawings, equipment manuals, written warranties, acceptance of the Work by the Owner and the delivery of the affidavits required in these General Conditions, the Engineer shall deliver the written Certificate of Completion by the Engineer to the Owner, with a copy to the Contractor, stating the entire amount of Work performed and compensation earned by the Contractor, including extra work and compensation therefor. The Owner may accept the Work for occupancy or use while asserting claims against the Contractor; disputing the amount of compensation due to the Contractor; disputing the quality of the Work, its completion, or its compliance with the Contract Documents; or any other reason.

- (g) Unless there is a dispute about the compensation due to the Contractor, Defective Work, quality of the Work, compliance with the Contract Documents, completion itself, claims by the Owner, other matters in contention between the parties, or unless monies are withheld pursuant to the Comptroller's Debt Setoff Program, within thirty (30) days after receipt and acceptance of the Schedule of Values and Certificate for Payment in proper form by the Engineer at the monthly pay meeting, which shall be considered the receipt date, the Owner shall pay to the Contractor the amount approved by the Engineer, less all prior payments and advances whatsoever to or for the account of the Contractor. In the case of final payment, the completed Affidavit of Payment of Claims, the Certificate of Completion by the Contractor and the Certificate of Completion by the Engineer shall accompany the final Schedule of Values and Certificate for Payment which is forwarded to the Owner for payment. The date on which payment is due shall be referred to as the Payment Date. In the event of disputes, payment shall be mailed on or before the Payment Date for amounts and Work not in dispute, subject to any set offs claimed by the Owner, provided, however in instances where further appropriations are required by the General Assembly or where the issuance of further bonds is required, in which case, payment shall be made within thirty (30) days after the effective date of such appropriation or within thirty (30) days after the receipt of bond proceeds by the Owner. All prior estimates and payments including those relating to extra Work may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any request for payment by the Contractor contains a defect or impropriety, the Owner shall notify the Contractor of any defect or impropriety which would prevent payment by the Payment Date, within five (5) days after receipt of the Schedule of Values and Certificate for Payment by the Owner from the Engineer.
- (h) Interest shall accrue on all amounts owed by the Owner to the Contractor which remain unpaid seven (7) days following the Payment Date. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in the publication entitled The Wall Street Journal on the weekday following each such Weekly Auction. During the period of time when the amounts due to the Contractor remain unpaid following the seventh (7) day after the Payment Date, the interest accruing shall fluctuate on a weekly basis and shall be that established by the immediately prior Weekly Auction. It shall be the responsibility of the Contractor to gather and substantiate the applicable weekly interest rates to the satisfaction of the Owner and to calculate to the satisfaction of the Owner the interest due. In no event shall the rate of interest charge exceed the rate of interest charged pursuant to §58.1-1812 of the Code of Virginia. No interest shall accrue on retainage or when payment is delayed because of disagreement between the Owner and the Contractor regarding the quantity, quality or timeliness of the Work, including, but not limited to, compliance with Contract Documents or the accuracy of any Request for Payment received. This exception to the accrual of interest stated in the preceding sentence shall apply only to that portion of a delayed payment which is actually the subject of such a disagreement and shall apply only for the duration of such disagreement. Nothing contained herein shall be interpreted, however, to prevent the withholding of retainage to assure faithful performance of the Contract. These same provisions relating to payment of interest to the Contractor shall apply also to the computation and accrual of interest on any amounts due from the Contractor to the Owner for deductive change orders and to amounts due on any claims by the Owner. The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee.

- (i) The acceptance by the Contractor of the final payment shall be and operate as a release to the Owner of all claims by the Contractor, its Subcontractors and Suppliers, and of all liability to the Contractor whatever, including liability for all things done or furnished in connection with this Work, except for things done or furnished which are the subject of unresolved claims for which the Contractor has filed a timely written notice of intent, provided a claim is submitted no later than sixty (60) days after final payment. Acceptance of any interest payment by the Contractor shall be a release of the Owner from claims by the Contractor for late payment.
- (j) No certificate for payment issued by the Engineer, and no payment, final or otherwise, no certificate of completion, nor partial or entire use or occupancy of the Work by the Owner, shall be an acceptance of any Work or materials not in accordance with the Contract, nor shall the same relieve the Contractor of responsibility for faulty materials or Defective Work or operate to release the Contractor or his Surety from any obligation under the Contract, the Standard Performance Bond and the Standard Labor and Material Payment Bond.

**36. PAYMENTS BY CONTRACTOR (§2.2-4332) Code of Virginia, the Contractor is obligated to:**

- (a) Within seven (7) days after receipt of amounts paid to the Contractor by the Owner for Work performed by the Subcontractor or Supplier under this Contract,
  - (1) Pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or the materials furnished by the Supplier under this Contract; or
  - (2) Notify the Subcontractor or Supplier, in writing, of his intention to withhold all or a part of the Subcontractor or Supplier's payment with the reason for nonpayment;
- (b) Pay interest to the Subcontractor or Supplier on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Owner for Work performed by the Subcontractor or materials furnished by the Supplier under this contract, except for amounts withheld as allowed under subsection (a) (2) of this Section.
- (c) Include in each of his subcontracts a provision requiring each Subcontractor to 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. Each Subcontractor shall include with its invoice to, or request for payment from, the Contractor, a certification that that Subcontractor has paid each of its suppliers and lower tier subcontractors their proportionate share of previous payments received from the Contractor attributable to the Work performed or the materials furnished by it under this Contract.

The Contractor's obligation to pay interest to the Subcontractor or Supplier pursuant to subsection (b) of this Section is not an obligation of the Owner. A modification to this Contract shall not be made for the purpose of providing reimbursement for such interest charge. A Contractor's cost reimbursement claim shall not include any amount for reimbursement of such interest charge.

## 37. CHANGES IN THE WORK

- (a) The Owner may at any time, by written order utilizing the Change Order Form and without notice to the sureties, make changes in the Work which are within the general scope of the Contract except that no change will be made which will increase the total Contract Price to an amount more than twenty-five percent (25%) or \$50,000 in excess of the original Contract Price without notice to sureties. At the time of the Preconstruction Meeting, the Contractor and the Owner shall advise each other in writing of their designees authorized to accept and/or approve changes to the Contract Price and of any limits to each designee's authority. Should any designee or limits of authority change during the time this Contract is in effect, the Contractor or Owner shall give written notice to the other within seven (7) calendar days, utilizing the procedures set forth in these General Conditions. The Contractor agrees and understands that the authority of the Owners designee is limited by Virginia Code § 2.2-4309 and any other applicable statute.

In making any change, the charge or credit for the change shall be determined by one of the following methods as selected by the Owner.

- (1) By a mutually agreed fixed amount change to the Contract Price and/or time allowed for completion of the Work. The Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials and equipment required as well as any mark-up used. The price change shall include the Contractor's overhead and profit.
- (2) By using unit prices and calculating the number of net units of Work in each part of the Work which is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices.
- (3) By ordering the Contractor, by Change Order citing this subsection, to proceed with the change to the Work; to keep in a form acceptable to the Owner, an accurate, itemized account of the cost of the change in the Work, including, but not limited to, the costs of labor, materials, equipment, and supplies; and to annotate a copy of the Project schedule to accurately show the status of the Work at the time this initial change order is issued, to show the start and finish of the changed Work, and the status of the Work when the changed Work is completed. A Change Order citing this subsection shall describe the parameters of the change in the Work, describe the cost items to be itemized and verified for payment, address the impact on the schedule for Substantial Completion, and state that a subsequent Change Order will be issued to incorporate the cost of the changed Work into the Contract Price and any change in the Contract Time for Completion or Contract Completion Date. The Contractor shall sign the Change Order acknowledging he has been directed to proceed with the changed Work. The Contractor's signature on each initial Change Order authorizing Work and citing this Subsection as the method for determining the cost of the Work shall not constitute the Contractor's agreement on the cost or time impact of the changed Work.

Except as otherwise may be agreed to in writing by the Owner, such costs shall not exceed those prevailing for the trades or crafts, materials, and equipment in the locality of the Project, may include only those items listed as allowable and shall not include any of the costs listed as

not allowable. The Owner shall be permitted, on a daily basis, to verify such records and may require such additional records as are necessary to determine the cost of the change to the Work.

Within fourteen (14) days of the conclusion of such ordered Work, the Contractor and the Owner shall arrive at a cost for the Change Order, based on the records kept and the Contractor's allowance for overhead and profit as set forth in Subsections (d), (e) and (f) below, and such costs shall be incorporated into a Change Order which references the Change Order ordering the Work. If agreement on the cost of the changed Work cannot be reached within the fourteen (14) days allotted, the Contractor may file a claim for the disputed amount as provided for in the General Conditions.

- (b) The Contractor shall review any Owner requested or directed change and shall respond in writing within fourteen (14) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the Contract time and Price. The Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the proposed change in Contract Price.

The Owner shall review the Contractor's proposal and respond to the Contractor within thirty (30) days of receipt. If a change to the Contract Price and time for performance are agreed upon, both parties shall sign the Change Order. If the price and time are not agreed upon, the Owner may direct the Contractor to proceed. Changes to the Contract time and/or Price shall be effective when signed by both parties, unless approval by Town Council or designee is required.

- (c) In figuring changes, any instructions for measurement of quantities set forth in the Contract shall be followed.

- (d) The percentage for overhead and profit to be used in calculating both additive and deductive changes in the Work (other than changes covered by unit prices) shall not exceed the percentages for each category listed below. Said percentages for overhead and profit shall be applied only on the net cost of the changed Work (i.e. difference in cost between original and revised Work):

- (1) If a Subcontractor does all or part of the changed Work, the Subcontractor's markup for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). The Contractor's mark-up on the subcontractor's price shall be a maximum of ten percent (10%).
- (2) If the Contractor does all or part of the changed Work, its markup for overhead and profit on the changed Work it performs shall be a maximum of fifteen percent (15%).
- (3) If a Sub-subcontractor at any tier does all or part of the changed Work, the Sub-subcontractor's markup on that Work shall be a maximum of fifteen percent (15%). The markup of a sub-subcontractor's Work by the Contractor and all intervening tiers of Subcontractors shall not exceed a total of ten percent (10%).
- (4) Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract Price attributable to that Work shall be deducted from the Contract Price. However, in the event

that material Submittals have been approved and orders placed for said materials, a lesser amount, but in no case less than eighty percent (80%) of the Contract Price attributable to that Work, shall be deducted from the Contract Price. The credit to the Owner for reduced premiums on labor and material bonds and performance bonds shall in all cases be one hundred percent (100%).

(e) Allowable costs for changes in the Work may include the following:

- (1) Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the Owner.
- (2) Materials incorporated into the change to the Work, including costs of transportation and storage, if applicable. If applicable, all cash discounts shall accrue to the Contractor, unless the Owner deposits funds with the Contractor to make such payments, and all trade discounts, rebates, refunds, and returns from the sale of surplus materials shall accrue to the Owner.
- (3) Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If rented expressly for accomplishing the change in the Work, the cost shall be the rental rate according to the terms of the rental agreement, which the Owner shall have the right to approve. If owned by the Contractor, the costs shall be a reasonable price based upon the life expectancy of the equipment and the purchase price of the equipment. If applicable, transportation costs may be included.
- (4) Costs of increases in premiums for the Standard Labor and Material Payment Bond and the Standard Performance Bond, provided coverage for the cost of the change in the Work results in such increased costs. At the Owner's request, the Contractor shall provide proof of his notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up.
- (5) Contractor and Subcontractor overhead costs as set forth in Subsection (d) markups above.
- (6) If the change in the Work also changes the Time for Completion or Contract Completion Date by adding days to perform the Work, an itemized accounting of the following Site direct overhead expenses for the change to the time may be considered as allowable costs for compensation in addition to those shown above:

The Site superintendent's prorata salary, temporary Site office trailer expense, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary / toilet facilities. All other direct and indirect overhead expenses are considered covered by and included in the Subsection (d) markups above.

- (7) Any other costs directly attributable to the change in the Work with the exception of those set forth below.

(f) Allowable costs for changes in the Work shall not include the following:

- (1) Costs due to the negligence of the Contractor, any Subcontractor, Supplier, their employees or other persons for whom the Contractor is responsible, including, but not limited to, costs for the correction of Defective Work, for improper disposal of material, for equipment wrongly supplied, for delay in performing the Work, or for delay in obtaining materials or equipment.
  - (2) Home office expenses including payroll costs for the Contractor's officers, executives, administrators, project managers, accountants, counsel, engineers, timekeepers, estimators, clerks, and other similar administrative personnel employed by the Contractor, whether at the Site or in the Contractor's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups allowable in Subsection (d) above.
  - (3) Home and field office expenses not itemized. Such items include, but are not limited to, expenses of Contractor's home and branch offices, Contractor's capital expenses, interest on Contractor's capital used for the Work, charges for delinquent payments, small tools, incidental job costs, rent, utilities, telephone and office equipment, and other general overhead expenses.
- (g) All Change Orders, except the "initial" Change Orders authorizing work must state that the Contract Time for Completion or Contract Completion Date is not changed or is either increased or decreased by a specific number of days. The old Time for Completion and, if changed, the new Time for Completion must be stated.

If the Contractor requests an extension to the Time for Completion or a later Contract Completion Date, he must provide written justification for the extension to the Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. When a CPM schedule is required by the Contract, no extension to the Time for Completion or Contract Completion Date shall be allowed unless, and then only to the extent that, the additional or changed Work increases the length of the critical path beyond the Time for Completion or Contract Completion Date. If approved, the increase in time required to complete the Work shall be added to the Time for Completion or Contract Completion Date.

The Owner may decrease, by Change Order, the Time for Completion or Contract Completion Date when an Owner-requested deletion from the Work results in a decrease in the actual time required to complete the Work as demonstrable on the Bar Graph Schedule or on the CPM Schedule, whichever is appropriate. The Contractor may submit a request to decrease, by Change Order, the Time for Completion or Contract Completion Date under the procedures and subject to the considerations set forth in the General Conditions. No request for such decrease shall be considered for approval unless the proposed shorter schedule is otherwise acceptable. The Change Order decreasing the Time for Completion or changing the Contract Completion Date must be signed by both the Owner and the Contractor.

With the exception of Change Orders, which shall arrive at a change to the Contract Price and any change to time using the procedures set forth therein, each Change Order shall include all time and monetary impacts of the change, whether the Change Order is considered alone or with all other changes during the course of the Project failure to include a change to time and Contract Price, Change Orders shall waive any change to the time and Contract Price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the

Change Order. Such a determination may be postponed not more than forty-five (45) days to give the Contractor an opportunity to demonstrate a change in the time and price needed to complete the Work. During any such postponement, the Work shall proceed, unless the Owner agrees otherwise.

If at any time there is a delay in the critical path of the Work due to postponement, due to the Contractor's efforts to justify an extension of the time or an increase in the Contract Price, or due to the Contractor's refusal to proceed with any of the Work, pending agreement on a change in time or price, such delay and any Contractor costs resulting from it shall not serve as the basis for the extension of the Time for Completion or Contract Completion Date or for an increase in the Contract Price.

- (h) The acceptance by the Contractor of any payment made by the Owner under a Change Order shall be and operate as a release to the Owner of all claims by the Contractor and of all liability owing to the Contractor for all things done or furnished in connection with the Work described in the Change Order. The execution of any Change Order by the Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor or his surety from any obligation arising under the Contract or the Standard Performance Bond or Standard Labor and Material Payment Bond.
- (i) Payments will not be made for any Work, labor or materials on a fixed price, unit price until the Contractor has furnished the Owner documents, certified as true and correct by an authorized officer or agent of the Contractor, evidencing the cost of such Work, labor and materials. The Owner may require any or all of the following documentation to be provided by the Contractor:
  - (1) certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor or other worker;
  - (2) equipment type & model, dates, daily hours, total hours, rental rate or other specified rate, and extension for each unit of equipment;
  - (3) invoices for materials showing quantities, prices, and extensions;
  - (4) daily records of waste materials removed from the Site and/or fill materials imported to the Site;
  - (5) certified measurements of overexcavations, piling installed and similar work; and/or
  - (6) transportation records for materials, including prices, loads, and extensions.

Requests for payment shall be accompanied and supported by invoices for all materials used and for all transportation charges claimed. If materials come from the Contractor's own stock, then an affidavit may be furnished, in lieu of invoices, certifying quantities, prices, etc. to support the actual cost.

### **38. EXTRAS**

If the Contractor claims that any instructions given to him by the Engineer or by the Owner, by drawings or otherwise, involve extra Work which increases the scope of the Contract, then, except in emergencies



endangering life or property, he shall give the Engineer and the Owner written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than fourteen (14) days after the receipt of such instructions. Should it not be immediately clear to the Contractor that the change involves extra Work outside the scope of the Contract, written notice shall be sufficient if given as soon as possible after such realization, but in no event later than fourteen (14) days after the start of such Work. If the Owner agrees, a Change Order shall be issued and any additional compensation shall be determined by one of the three (3) methods provided in said Section 37, as selected by the Owner. Except as otherwise specifically provided, no claims for extra Work shall be allowed unless timely notice, as required by this Section, is given by the Contractor and unless such Work is performed pursuant to written Change Order as provided in Section 37. The Change Order shall designate which of the three methods for computing charges and credits set forth in said Section 37(a) shall be used.

### **39. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT**

If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days any sum certified by the Engineer when no dispute exists as to the sum due or any provision of the Contract, then the Contractor may, upon ten (10) calendar days written notice to the Owner and the Engineer, stop Work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit on the Work performed shall be recovered only to the extent that the Contractor can demonstrate that he would have had profit on the entire Contract if he had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the reasonable cost of physically closing down the Site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

### **40. OWNER'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE**

- (a) If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the Owner may terminate the Contract. If the Contractor should refuse or should repeatedly fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials and equipment, or if he should fail to make prompt payment to Subcontractors or Suppliers of material or labor, or if he should disregard laws, ordinances or the written instructions of the Engineer or the Owner, or otherwise be in substantial violation of any provision of the Contract, then the Owner may terminate the Contract.
- (b) Prior to termination of the Contract, the Owner shall give the Contractor and his surety ten (10) calendar days written notice pursuant to these General Conditions, during which the Contractor and/or his surety may rectify the basis for the notice. If rectified to the satisfaction of the Owner within said ten (10) days, the Owner may rescind its notice of termination. If not, the termination for cause shall become effective at the end of the ten (10) day notice period. In the alternative, the Owner may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the basis for the termination will be remedied in a time and manner which the Owner finds acceptable. If at any time after such postponement, the Owner determines that Contractor and/or its surety has not or is not likely to rectify

the causes of termination in an acceptable manner or within the time allowed, then the Owner may immediately terminate the Contract for cause, without the necessity of further ten (10) day notice, by notifying the Contractor and his surety in writing of the termination. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

- (c) Upon termination of the Contract, the Owner shall take possession of the Site and of all materials, tools and equipment thereon and finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
- (d) If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner.
- (e) Termination of the Contract under this Section is without prejudice to any other right or remedy of the Owner.

#### **41. TERMINATION BY OWNER FOR CONVENIENCE**

- (a) Owner may terminate this Contract, in whole or in part, at any time without cause upon giving the Contractor written notice of such termination pursuant to these General Conditions. Upon such termination, the Contractor shall immediately cease Work and remove from the Site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:
  - (1) All amounts then otherwise due under the terms of this Contract,
  - (2) Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Schedule of Values and Certificate for Payment through the date of termination,
  - (3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided by the preceding sentence. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature.
- (b) In no event shall termination for the convenience of the Owner terminate the obligations of the Contractor's surety on its payment and performance bonds.

#### **42. DAMAGES FOR DELAYS; EXTENSION OF TIME**

- (a) If the Contractor is delayed at any time in the progress of the Work by any act or omission of the Owner, its agents or employees or any separate independent contractor of the Owner, and the act or omission is the result of or is necessitated by causes outside the Owner's control; or if the Contractor

is delayed by strikes, fires, unusual delays in transportation or unavoidable casualties, or other causes outside the Owner's or Contractor's control, the Contractor shall give the Owner and Engineer written notice within ten (10) days of the inception of the delay. The Owner shall extend the time for Substantial Completion or Final Completion, as the case may be, for the length of time that the Substantial Completion or Final Completion of the Work was actually delayed thereby, and the Contractor shall not be charged with liquidated or actual damages for delay during the period of such extension nor shall the Contractor be due compensation or damages of any kind, under any theory of law, as a result of such delay, the impact of such delay, or acceleration of Work as a result of such delay. In the event a CPM schedule is required by the Contract, no extension of the time allowed for Substantial Completion shall be granted unless the Contractor demonstrates a delay in the critical path of the approved CPM schedule or approved bar graph schedule.

- (b) If the Contractor is delayed at any time in the progress of the Work by any act or omission of the Owner, its agents or employees, due to causes within their control, or delayed by the Owner's separate, independent contractors, when such delay results from causes within the Owner's control, and the Contractor intends to seek additional compensation for damages, if any, caused by the delay, the Contractor shall inform the Owner and the Engineer immediately at the time of the occurrence giving rise to the delay by the fastest means available and shall give written notice no later than two (2) working days after inception of the delay. The Contractor's notice to the Owner shall specify the nature of the delay claimed by the Contractor, the cause of the delay and the impact of the delay on the Contractor's Work schedule. The Owner shall then have three (3) working days to respond to the Contractor's notice with a resolution. Remedy or direction to alleviate the delay or with a notice rejecting the claim for delay alleged to be caused by the Owner or parties for whom the Owner is responsible. If the issue is not then resolved, the Contractor may submit a request for Change Order or submit a claim. The Contractor shall only be entitled to additional compensation if the delay was unreasonable and was caused solely by acts or omissions of the Owner, its agents or employees, due to causes within their control, or was caused by the Owner's separate, independent contractor, when such delay resulted solely from causes within the Owner's control.
- (c) The Contractor shall not be entitled to an extension of the Time for Completion or Contract Completion Date or to any additional compensation for delays caused by acts or omissions of the Contractor due to causes within his control, including, but not limited to, delays resulting from Defective Work including workmanship and/or materials, from rejected work which must be corrected before dependent work can proceed, from Defective Work or rejected work for which corrective action must be determined before like work can proceed, or from incomplete, incorrect or unacceptable Submittals or samples.
- (d) No extension of time or additional compensation, if applicable, will be granted for any delay unless the claimed delay directly affects the critical path of the approved CPM schedule or the schedule shown on the approved bar graph schedule, whichever is applicable, and any float has been consumed. No extension of time or additional compensation shall be, given for a delay if the Contractor failed to give notice in the manner and within the time prescribed above, whichever applies. Furthermore, no extension of time or additional compensation shall be given for any delay unless a claim therefor is made in writing to the Owner, with a copy to the Engineer, within twenty (20) days of the end of the delay. The claim shall state the cause of the delay, the number of days of extension requested and any compensation requested by the Contractor. The Contractor shall report the termination of the delay to the Owner and Engineer not less than ten (10) days after such termination. Failure to give notice of either the inception or the termination of the cause of delay or failure to present a claim for extension of time and/or monetary compensation within the times

prescribed shall constitute a waiver of any claim for extension or additional compensation based upon that cause.

- (e) Requests for compensation for delays pursuant to Subsection (b) above must be substantiated by itemized data and records clearly showing that the Work delayed was on the critical path of the approved CPM schedule or on the sequence of Work on the approved bar graph schedule, as modified, and that the additional costs incurred by the Contractor are directly attributable to the delay in the Work claimed. Furthermore, compensation for delay shall be calculated from the contractual Time for Completion or Contract Completion Date, as adjusted by Change Order, and shall not be calculated based on any early completion planned or scheduled by the Contractor, unless a Change Order has been executed changing the Time for Completion or the Contract Completion Date to reflect such early completion.

If there is an extension in the Time for Completion or the Contract Completion Date and if the Contractor is entitled to compensation and where there is no change in the Work, an itemized accounting of the following direct Site overhead expenses will be considered as allowable costs to be used in determining the compensation due the Contractor:

Site superintendent prorata salary, temporary Site office expense, temporary Site facilities, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets. A fifteen percent (15%) markup of these expenses will be allowed to compensate the Contractor for home office and other direct or indirect overhead expenses.

- (f) If the Contractor submits a claim for delay damages, the Contractor shall be liable to the Owner for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation to be false or to have no basis in law or in fact. (Section 2.2-4335, Code of Virginia)
- (g) Any change in the Contract Time for Completion or Contract Completion Date shall be accomplished only by issuance of a Change Order.
- (h) If the Contractor fails to complete the Work within the Time for Completion or the Contract Completion Date, the Contractor shall be liable, to the Owner in the amounts set forth in the Supplemental General Conditions, if any, not as a penalty, but as fixed, agreed and liquidated damages for delay until the Work is substantially or finally completed as the case may be. If liquidated damages are not so fixed in the Supplemental General Conditions, the Contractor shall be liable for any and all actual damages sustained as a result of delay. In addition to damages for delay, whether liquidated or actual, the Contractor shall also be liable for any and all actual damages sustained by the Owner as a result of any other breach of the Contract, including, but not limited to, Defective Work and abandonment of the Contract.
- (i) If liquidated damages are provided by the Supplemental General Conditions, the following provisions apply:
  - (1) If the Work is not substantially complete by the Time for Completion or Contract Completion Date, the Contractor shall owe to the Owner, not as a penalty but as Step One liquidated damages, the sum stated in the Supplemental General Conditions for Step One-liquidated damages for each and every partial or total calendar day of delay in Substantial Completion. As

stated in the Supplemental Conditions, the Owner must notify the Contractor in writing of the Owner's intention to claim liquidated damages prior to the time such liquidated damages begin to accrue.

- (2) Once the Work is substantially complete, the accrual of Step One liquidated damages shall cease and the Contractor shall have thirty (30) calendar days in which to achieve Final Completion of the Work.
- (3) If Final Completion of the Work is not achieved on or before the thirtieth (30th) calendar day after Substantial Completion, and if the Owner has not granted any extension of time, the Contractor shall owe to the Owner, not as a penalty but as Step Two liquidated damages, the sum stated in the Supplemental General Conditions as Step Two liquidated damages for each and every partial or total calendar day of delay in Final Completion.

#### **43. INSPECTION FOR SUBSTANTIAL COMPLETION AND FINAL COMPLETION**

- (a) The Contractor shall notify the Owner, in writing on the Certificate of Partial or Substantial Completion by the Contractor, of the date when the Work or designated portion thereof, will be, in his opinion, substantially complete and ready for inspection and testing to determine if it has reached Substantial Completion. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the Engineer, who will attach his written endorsement as to whether or not he concurs with the Contractor's statement that the Work will be ready for inspection and testing on the date given. The Engineer's endorsement is a convenience to the Owner only and shall not relieve the Contractor of his responsibility in the matter nor shall the Engineer's endorsement be deemed to be evidence that the Work was substantially complete and ready for inspection and testing. Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, Owner and Engineer.

The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the project function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing as provided in these General Conditions. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in a written list of unfinished Work and Defective Work, commonly referred to as a "punch list", which must be finished and corrected to obtain Final Completion.

After successful completion of the testing and the Engineer determines that, in its opinion, the Work, either in whole or in part, is substantially complete, the Engineer shall notify the Owner, in writing on the Certificate of Partial or Substantial Completion by the Engineer, that the Work, or a specified portion thereof, is recommended to be declared substantially complete. The Owner shall notify the Contractor, in writing, of the date the Owner accepts the Work, or the specified portion thereof, as substantially complete or the Owner shall notify the Contractor of the deficiencies to be corrected or completed before such Work will be accepted as substantially complete.

- (b) The Contractor shall notify the Owner, in writing on the Certificate of Completion by the Contractor, of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least five (5) days in advance of said date and shall be forwarded through the Engineer, who will attach his endorsement as to whether or not he concurs in the Contractor's statement that the Work will be ready for inspection and testing on the date given. That inspection and any necessary testing shall be conducted in the same manner as the

inspection for Substantial Completion. When the Work is finally and totally complete, including the elimination of all defects, the Work shall be finally accepted by the Owner and final payment shall be made in accordance with these General Conditions.

- (c) The Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more Substantial or Final Completion re-inspections are required, the Contractor shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments due to the Contractor.
- (d) Approval of Work at or as a result of any inspection required herein shall not release the Contractor or his surety from responsibility for complying with the Contract.

#### **44. GUARANTEE OF WORK**

- (a) Except as otherwise specified, all Work shall be, and is hereby, guaranteed by the Contractor against defects resulting from the use of materials, equipment or workmanship, which are defective, inferior, or not in accordance with the terms of the Contract, for one (1) year from the date of Final Completion of the entire Project by the Owner. Equipment which has seasonal limitations on their operation shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the Owner.
- (b) If, within any guarantee period, Work which is not in accordance with the Contract, Defective Work, or inferior material, equipment or workmanship is noted by the Owner or Engineer which requires or renders necessary repairs or changes in connection with the guaranteed Work, the Contractor shall, promptly upon receipt of notice from the Owner, such notice being given not later than two weeks after the guarantee period expires and without expense to the Owner:
  - (1) Place in satisfactory condition in every particular all of such guaranteed Work and correct all defects, inferior materials, equipment or workmanship therein;
  - (2) Make good all damage to the structure or Site or equipment or contents thereof, which, in the opinion of the Owner or the Engineer, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract; and
  - (3) Make good any Work or materials or the equipment and contents of structures and/Or Site disturbance that results from fulfilling the provisions of this Section.
- (c) In any case, when in fulfilling the requirements of the Contract and this guarantee or any other guaranty or warranty, the Contractor disturbs any work performed by a separate contractor, he shall restore such work to a condition satisfactory to the Engineer and Owner and guarantee such restored work to the same extent as if it was guaranteed under this Contract.
- (d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee as set forth in this Section, the Owner may have the defects or inferior materials, equipment or workmanship corrected and the Contractor and his surety shall be liable for all expense incurred.

- (e) AU special warranties and guarantees applicable to definite parts of the Work that may be stipulated in or required by the Contract Documents shall be subject to the terms of this Section during the first year of the life of such special warranty or guarantee.
- (f) The guarantee of this Section shall be in addition to and not in lieu of all other warranties, express or implied, applicable to or arising from this Contract or by law.
- (g) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for Defective Work. This Section relates only to the specific obligation of the Contractor as set forth in this Section to correct the Work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under the Contract Documents.
- (h) In the event the Work of the Contractor is to be modified by another contractor, either before or after the Final Inspection, the first Contractor shall remain responsible in all respects under this Section's Guarantee of Work and under any other warranties or guarantees, express or implied, applicable to or arising from this Contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying his Work. The first Contractor and the contractor making the modifications shall each be solely responsible for his respective work. The contractor modifying the earlier Work shall be responsible for any damage to or defect introduced into the Work by his modification. If the first contractor claims that a subsequent contractor has introduced defects of materials and/or workmanship into his Work, it shall be the burden of the contractor making the claim to demonstrate clearly the nature and extent of such introduced defects and the other contractor's responsibility for those defects. Any contractor modifying the work of another shall have the same burden if he asserts that defects in his work were caused by the contractor whose work he is modifying.

#### **45. ASSIGNMENTS**

Neither party to the Contract shall assign the Contract in whole or any part without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the prior written consent of the Owner. Consent to assignment shall not be unreasonably withheld. No assignment shall relieve any party from its obligations under the Contract

#### **46. CONTRACTUAL DISPUTES (§16-506, Code of Town of Blacksburg)**

All claims which may arise under this contract shall be resolved through the procedure set forth in Blacksburg Town Code, Section 16-506 "Contractual Disputes."

#### **47. ASBESTOS**

- (a) This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the Work, when the scope of the project has been reviewed and a comprehensive survey conducted by an individual licensed by the Virginia Department of Professional and Occupational Regulation to conduct building inspections for asbestos containing materials in buildings, and where the Owner has

attempted to remove or encapsulate all asbestos containing material that may become friable or damaged during this Project.

Prior to commencement of Work, the results of the comprehensive survey or any other asbestos survey shall be made available to the Contractor, who shall be responsible for performing his Work so as not to disturb any remaining asbestos, encapsulated or otherwise, identified in such survey or surveys.

If the Contractor discovers or inadvertently disturbs any material that he knows, should have known or has reason to believe, may contain asbestos that has not been previously identified, was overlooked during the removal, was deemed not to be friable or was encapsulated, the Contractor shall stop Work in the area containing or suspected to contain the asbestos, secure the area, and notify the Owner and the Engineer immediately by telephone or in person with written notice as soon as possible. The Owner will have the suspect material sampled.

If the sample is positive and must be disturbed in the course of the Work, the Owner shall have the material repaired or removed and shall pay for the bulk sample analysis.

Except as provided in § 11-4.1 of the Code of Virginia, if the material disturbed is not within the Contractor's authorized Work and/or Work area or under this Contract, the Contractor shall pay for all associated sampling and abatement costs.

- (b) If asbestos abatement is included as a part of the Work, the Contractor shall assure that the asbestos abatement work is accomplished by those duly licensed as described in Section 3 of these General Conditions and in accordance with the specific requirements of the Contract and all applicable laws and regulations.
- (c) If asbestos abatement is included as part of the Work, the licensed asbestos Subcontractor shall obtain the insurance required.

#### **48. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT**

- (a) As a part of the Work, the Contractor in conjunction with his Subcontractors and Suppliers shall provide the Owner's operations and maintenance personnel with adequate instruction and training in the proper operation and maintenance of any equipment, systems, and related controls provided or altered in the Work. The training requirements may be further defined in the specifications.
- (b) The Contractor shall provide the Owner with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment and systems provided in the Work. Further specific requirements may be indicated in the specifications.

#### **49. PROJECT MEETINGS**

- (a) The intention of this Section is that the Contractor, the Owner and the Engineer have timely exchange of information and cooperate to accomplish the Work as required by the Contract Documents. The Contractor is responsible for managing the Work, obtaining approvals and requesting clarifications on a timely, reasonable basis. The Owner and its Engineer are responsible for making a reasonable effort to provide timely responses to the Contractor.



**(b) Preconstruction Meeting:**

Prior to the start of construction and no later than 15 calendar days after the Notice to Proceed, a "Preconstruction" meeting shall be held with attendees to include the Owner's Project Manager and Project Inspector, the Engineer's project manager and representatives of each design discipline involved in the Project, the Contractor's project manager and superintendent (and scheduler, if Contractor desires), and representatives of the Contractor's major Subcontractors. The purpose of the meeting is to clarify and discuss the specifics related to, but not limited to, the following:

- (1) Persons involved from each entity and their chain of authority including the names of persons authorized to sign Change Orders and any limits to their authority.
- (2) Names, addresses, telephone numbers and fax numbers to be used for Requests for Information (RFI), Requests for Clarification (RFC), Requests for Proposals (RFP), shop drawings, Submittals, and notices.
- (3) Contractor's proposed construction schedule and Owner's sequencing requirements, if any.
- (4) Schedule of Values and Certificate for Payment requirements and procedures.
- (5) Procedures for shop drawings, product data and Submittals.
- (6) Procedures for handling Field Orders and Change Order Form.
- (7) Procedures for Contractor's request for time extension, if any.
- (8) Construction Site requirements, procedures and clarifications to include:
  - Manner of conducting the Work
  - Site specialties such as dust and erosion control, stormwater management, project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic
  - Safety
  - Layout of the Work
  - Quality control, testing, inspections and notices required
  - Site visits by the Engineer and others
  - Owner's Project Inspector duties
  - Running Punch List
  - As-Built Drawings
- (9) Procedures and documentation of differing or unforeseen Site conditions
- (10) Monthly Pay Meeting
- (11) Project Close-Out requirements and procedures
- (12) Project records

(c) **Monthly Pay Meeting:**

Section 49 (b) establishes the requirement for a monthly pay meeting which will usually be held at or near the Site. In addition to Owner, Engineer and Contractor representatives, the following representatives, at a minimum, should be available to attend portions of the meeting, as applicable or necessary:

- Owner's Project Inspector
- Contractor's project superintendent
- Engineer representative of each discipline where Work was performed for the current pay request or where Work is projected to be performed in the coming month.
- A representative of each subcontractor who performed work included in the current pay request
- A representative of each subcontractor who is projected to perform work in the coming month.

The following topics should be included, as a minimum, in the monthly pay meeting:

- (1) Observations of status, quality and workmanship of Work in progress
- (2) Validation of the Schedule of Values and Certificate for payment
- (3) Conformance with proposed construction schedule
- (4) Outstanding Requests for Information, Requests for Clarification and Requests for Proposal
- (5) Submittals with action pending
- (6) Status of pending Change Orders
- (7) Status of Running Punch List items
- (8) Work proposed for coming pay period
- (9) Discussions of any problems or potential problems which need attention

(d) **Other Meetings:**

Requirements for other meetings, such as progress meetings, coordination meetings, preinstallation meetings and/or partnering meetings, may be included in the Contract Documents.

## V. FEDERAL TRANSIT ADMINISTRATION TERMS AND CONDITIONS

### ACCESS TO RECORDS AND REPORTS

1. **Record Retention.** The Contractor will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, leases, subcontracts, arrangements, other third party Contracts of any type, and supporting materials related to those records. (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
2. **Retention Period.** The Contractor agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.334. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
3. **Access to Records.** The Contractor agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information, including such records and information the contractor or its subcontractors may regard as confidential or proprietary, related to performance of this contract in accordance with 2 CFR § 200.337.
4. **Access to the Sites of Performance.** The Contractor agrees to permit FTA and its contractors access to the sites of performance under this contract in accordance with 2 CFR § 200.337.

### AMERICANS WITH DISABILITIES ACT(ADA)

The contractor agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

### BUY AMERICA REQUIREMENTS

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 and 2 CFR § 200.322 Domestic preferences for procurements, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR Part 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C), 49 U.S.C. § 5323(u) and 49 C.F.R. § 661.11. Domestic preferences for procurements

The bidder or offeror must submit to the Agency the appropriate Buy America certification. Bids or offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive. For more information please see the FTA's Buy America webpage at: <https://www.transit.dot.gov/buyamerica>

### CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

- a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available. 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR Part 381.
- b. to furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in 46 CFR § 381.7(a)(1) shall be furnished to both the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590; and
- c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### CHANGES TO FEDERAL REQUIREMENTS

Federal requirements that apply to the Recipient or the Award, the accompanying Underlying Agreement, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the Recipient's Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and

Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto at any tier.

## CIVIL RIGHTS LAWS AND REGULATIONS

The following Federal Civil Rights laws and regulations apply to all contracts.

The Contractor and any subcontractor agree to comply with all the requirements prohibiting discrimination on the basis of race, color, or national origin of the Title VI of the Civil Rights Act of 1964, as amended 52 U.S.C 2000d, and U.S. DOT regulation "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of the Title VI of the Civil rights Act," 49 C.F. R. Part 21 and any implementing requirement FTA may issue.

**1 Federal Equal Employment Opportunity (EEO) Requirements.** These include, but are not limited to:

a) Nondiscrimination in Federal Public Transportation Programs. 49 U.S.C. § 5332, covering projects, programs, and activities financed under 49 U.S.C. Chapter 53, prohibits discrimination on the basis of race, color, religion, national origin, sex (including sexual orientation and gender identity), disability, or age, and prohibits discrimination in employment or business opportunity.

b) Prohibition against Employment Discrimination. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Executive Order No. 11246, "Equal Employment Opportunity," September 24, 1965, as amended, prohibit discrimination in employment on the basis of race, color, religion, sex, or national origin.

**2 Nondiscrimination on the Basis of Sex.** Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq. and implementing Federal regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25 prohibit discrimination on the basis of sex.

**3 Nondiscrimination on the Basis of Age.** The "Age Discrimination Act of 1975," as amended, 42 U.S.C. § 6101 et seq., and Department of Health and Human Services implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, prohibit discrimination by participants in federally assisted programs against individuals on the basis of age. The Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, also prohibit employment discrimination against individuals age 40 and over on the basis of age.

**4 Federal Protections for Individuals with Disabilities.** The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. § 12101 et seq., prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

### Civil Rights and Equal Opportunity

The Agency is an Equal Opportunity Employer. As such, the Agency agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the Agency agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Contract, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

**1. Nondiscrimination.** In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**2. Race, Color, Religion, National Origin, Sex.** In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any Implementing requirements FTA may issue.

**4. Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against individuals on the basis of disability. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**5. Promoting Free Speech and Religious Liberty.** The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

## CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the

Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to FTA and the Regional Office of the Environmental Protection Agency. The following applies for contracts of amounts in excess of \$150,000:

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Agency, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.”

## **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

- a. Applicability: This requirement applies to all FTA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II.
- c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

### Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

## **DAVIS BACON ACT AND COPELAND ANTI-KICKBACK ACT**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland "Anti-Kickback" Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction." In accordance with the statute, the Contractor shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States." The Contractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

## **DEBARMENT AND SUSPENSION**

The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the AGENCY. If it is later determined by the AGENCY that the bidder or

proposer knowingly rendered an erroneous certification, in addition to remedies available to the AGENCY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

## **ENERGY CONSERVATION**

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).

## **EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United

States to enter into such litigation to protect the interests of the United States.

## **FLY AMERICA**

a) Definitions. As used in this clause—

1) "International air transportation" means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. 2) "United States" means the 50 States, the District of Columbia, and outlying areas. 3) "U.S.-flag air carrier" means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

b) When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, Agencies, and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

c) If available, the Contractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.

d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

### Statement of Unavailability of U.S.-Flag Air Carriers

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

e) Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

## **INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The provisions within include, in part, certain Standard Terms and Conditions required under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR § 200), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, detailed in 2 CFR § 200 or as amended by 2 CFR § 1201, or the most recent version of FTA Circular 4220.1 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

## **NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

The Recipient and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Recipient, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **NOTICE TO FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient.

## **PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the



Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

a. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain;
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - ii. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

b. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

c. See Public Law 115-232, section 889 for additional information.

d. See also § 200.471.

## PROMPT PAYMENT

*(Does not apply to projects fully funded by the Tribal Transportation Program (TTP).)*

The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

The contractor must promptly notify the Agency, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Agency.

## RESTRICTIONS ON LOBBYING

### Conditions on use of funds.

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, that the person has not made, and will not make, any payment prohibited by paragraph (a) of this section.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

(d) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a statement, whether that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

(e) Each person who requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan shall file with that agency a disclosure form if that person has made or has agreed to make any payment to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with that loan insurance or guarantee.

### Certification and disclosure.

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for:

- (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of:

- (1) A Federal contract, grant, or cooperative agreement exceeding \$100,000; or
- (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding \$150,000,

**Unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.**

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section:

- (1) A subcontract exceeding \$100,000 at any tier under a Federal contract;
- (2) A subgrant, contract, or subcontract exceeding \$100,000 at any tier under a Federal grant;
- (3) A contract or subcontract exceeding \$100,000 at any tier under a Federal loan exceeding \$150,000; or,
- (4) A contract or subcontract exceeding \$100,000 at any tier under a Federal cooperative agreement,

**Shall file a certification, and a disclosure form, if required, to the next tier above.**

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

(f) Any certification or disclosure form filed under paragraph (e) of this section shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification or disclosure, respectively. If a person fails to file a required certification or disclosure, the United States may pursue all available remedies, including those authorized by section 1352, title 31, U.S. Code.

(g) For awards and commitments in process prior to December 23, 1989, but not made before that date, certifications shall be required at award or commitment, covering activities occurring between December 23, 1989, and the date of award or commitment. However, for awards and commitments in process prior to the December 23, 1989 effective date of these provisions, but not made before December 23, 1989, disclosure forms shall not be required at time of award or commitment but shall be filed within 30 days.

(h) No reporting is required for an activity paid for with appropriated funds if that activity is allowable under either subpart B or C.

## **SAFE OPERATION OF MOTOR VEHICLES**

### **Seat Belt Use**

The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by the Contractor or Agency.

### **Distracted Driving**

The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contractor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Contract.

## **SEISMIC SAFETY**

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

## **SOLID WASTES (RECOVERED MATERIALS)**

A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## **SPECIAL DOL EEO CLAUSE FOR CONSTRUCTION PROJECTS**

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal

program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

## **SPECIAL NOTIFICATION REQUIREMENTS FOR STATES**

Applies to States –

a. To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

- (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
- (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and

(3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents - The State agrees to provide the information required under this provision in the following documents:

- (1) applications for federal assistance,
- (2) requests for proposals or solicitations,
- (3) forms,
- (4) notifications,
- (5) press releases,
- (6) other publications.

## TERMINATION

### Termination for Convenience (General Provision)

The Agency may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Agency's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Agency to be paid the Contractor. If the Contractor has any property in its possession belonging to Agency, the Contractor will account for the same, and dispose of it in the manner Agency directs.

### Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the Agency may terminate this contract for default. Termination shall be effected by serving a Notice of Termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the Agency that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Agency, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### Opportunity to Cure (General Provision)

The Agency, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the Notice of Termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Agency's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [10 days] after receipt by Contractor of written notice from Agency setting forth the nature of said breach or default, Agency shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Agency from also pursuing all available remedies against Contractor and its sureties for said breach or default.

### Waiver of Remedies for any Breach

In the event that Agency elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Agency shall not limit Agency's remedies for any succeeding breach of that or of any other covenant, term, or condition of this contract.

### Termination for Convenience (Professional or Transit Service Contracts)

The Agency, by written notice, may terminate this contract, in whole or in part, when it is in the Agency's interest. If this contract is terminated, the Agency shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

### Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract. If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

### Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension, or if the Contractor fails to comply with any other provisions of this contract, the Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Agency goods, the Contractor shall, upon direction of the Agency, protect and preserve the goods until surrendered to the Agency or its agent. The Contractor and Agency shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Agency.

### Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will ensure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provision of this contract, Agency may terminate this contract for default. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Agency may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Agency resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Agency in completing the work.

The Contractor's right to proceed shall not be terminated nor shall the Contractor be charged with damages under this clause if: 1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of Agency, acts of another contractor in the performance of a contract with Agency, epidemics, quarantine restrictions, strikes, freight embargoes; and 2. The Contractor, within [10] days from the beginning of any delay, notifies Agency in writing of the causes of delay. If, in the judgment of Agency, the delay is excusable, the time for completing the work shall be extended. The judgment of Agency shall be final and conclusive for the parties, but

subject to appeal under the Disputes clause(s) of this contract. 3. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Agency.

#### Termination for Convenience or Default (Architect and Engineering)

The Agency may terminate this contract in whole or in part, for the Agency's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Agency shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Agency's Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process. Agency has a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, all such data, drawings, specifications, reports, estimates, summaries, and other information and materials.

If the termination is for the convenience of the Agency, the Agency's Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Agency may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Agency.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Agency

#### Termination for Convenience or Default (Cost-Type Contracts)

The Agency may terminate this contract, or any portion of it, by serving a Notice of Termination on the Contractor. The notice shall state whether the termination is for convenience of Agency or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the Contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Agency, or property supplied to the Contractor by the Agency. If the termination is for default, the Agency may fix the fee, if the contract provides for a fee, to be paid the Contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Agency and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of Agency, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a Notice of Termination for Default, the Agency determines that the Contractor has an excusable reason for not performing, the Agency, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a Termination for Convenience.

### **VETERANS HIRING PREFERENCE**

Veterans Employment - Construction contracts of Federal financial assistance shall ensure that contractors working on a capital project funded using such assistance give a hiring preference, to the extent practicable, to veterans (as defined in section 2108 of title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### **OTHER RECOMMENDED CONTRACT REQUIREMENTS**

#### **CONFORMANCE WITH ITS NATIONAL ARCHITECTURE**

Intelligent Transportation Systems (ITS) projects shall conform to the National ITS Architecture and standards pursuant to 23 CFR § 940. Conformance with the National ITS Architecture is interpreted to mean the use of the National ITS Architecture to develop a regional ITS architecture in support of integration and the subsequent adherence of all ITS projects to that regional ITS architecture. Development of the regional ITS architecture should be consistent with the transportation planning process for Statewide and Metropolitan Transportation Planning (49 CFR Part 613 and 621).

#### **FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

(1) The contractor certifies that it:

(a) Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(b) Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

If the contractor cannot so certify, the Recipient will refer the matter to FTA and not enter into any Third Party Agreement with the Third Party Participant without FTA's written approval.

(2) Flow-Down. The Recipient agrees to require the contractor to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

#### **SEVERABILITY**

The Contractor agrees that if any provision of this agreement or any amendment thereto is determined to be invalid, then the remaining provisions thereof that conform to federal laws, regulations, requirements, and guidance will continue in effect.

#### **TRAFFICKING IN PERSONS**

The contractor agrees that it and its employees that participate in the Recipient's Award, may not:

(a) Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect;

(b) Procure a commercial sex act during the period of time that the Recipient's Award is in effect; or

(c) Use forced labor in the performance of the Recipient's Award or subagreements thereunder.

**BUY AMERICA CERTIFICATION  
STEEL OR MANUFACTURED PRODUCTS**

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If steel, iron, or manufactured products (as defined in 49 CFR 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR 661.13(b).

**Certificate of Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Company \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_

**Certificate of Non-Compliance with Buy America Steel or Manufactured Products Requirements**

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Company \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_  
Signature \_\_\_\_\_ Date \_\_\_\_\_



**GOVERNMENT-WIDE DEBARMENT AND SUSPENSION  
(NONPROCUREMENT)**

Recipients, contractors, and subcontractors that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) with which they propose to contract or subcontract is not excluded or disqualified. This is done by: (a) checking the SAM exclusions; (b) collecting a certification from that person (found below); or (c) adding a clause or condition to the contract or subcontract.

**Instructions for Certification:** Signing below indicates the prospective lower tier participant is providing the signed certification.

(1) It will comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180,

(2) To the best of its knowledge and belief, that its Principals and Subrecipients at the first tier:

a. Are eligible to participate in covered transactions of any Federal department or agency and are not presently:

1. Debarred,
2. Suspended,
3. Proposed for debarment,
4. Declared ineligible,
5. Voluntarily excluded, or
6. Disqualified

b. Its management has not within a three-year period preceding its latest application or proposal been convicted of or had a civil judgment rendered against any of them for:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction, or contract under a public transaction,
2. Violation of any Federal or State antitrust statute, or,
3. Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making any false statement, or receiving stolen property,

c. It is not presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in the preceding subsection 2.b of this Certification,

d. It has not had one or more public transactions (Federal, State, or local) terminated for cause or default within a three-year period preceding this Certification,

e. If, at a later time, it receives any information that contradicts the statements of subsections 2.a – 2.d above, it will promptly provide that information to FTA,

f. It will treat each lower tier contract or lower tier subcontract under its Project as a covered lower tier contract for purposes of 2 CFR part 1200 and 2 CFR part 180 if it:

1. Equals or exceeds \$25,000,
2. Is for audit services, or,
3. Requires the consent of a Federal official, and

g. It will require that each covered lower tier contractor and subcontractor:

1. Comply and facilitate compliance with the Federal requirements of 2 CFR parts 180 and 1200, and
2. Assure that each lower tier participant in its Project is not presently declared by any Federal department or agency to be:
  - a. Debarred from participation in its federally funded Project,
  - b. Suspended from participation in its federally funded Project,
  - c. Proposed for debarment from participation in its federally funded Project,
  - d. Declared ineligible to participate in its federally funded Project,
  - e. Voluntarily excluded from participation in its federally funded Project, or
  - f. Disqualified from participation in its federally funded Project, and

(3) It will provide a written explanation as indicated on a page attached in FTA's TrAMS platform or the Signature Page if it or any of its principals, including any of its first tier Subrecipients or its Third-Party Participants at a lower tier, is unable to certify compliance with the preceding statements in this Certification Group,

**Certification**

Contractor: \_\_\_\_\_

Signature of Authorized Official: \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Name and Title of Contractor's Authorized Official: \_\_\_\_\_

**Federal Certifications**

**CERTIFICATION AND RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_ hereby certify  
(Name and title of official)

On behalf of \_\_\_\_\_ that  
(Name of Bidder/Company Name)

- No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.,

Name of Bidder/Company Name: \_\_\_\_\_

Type or print name: \_\_\_\_\_

Signature of authorized representative: \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

## **VI. SUPPLEMENTAL CONDITIONS**

Liquidated damages will be assessed as damages, but not as a penalty, at a rate of \$200.00 per calendar day, as the sole remedy, for each and every calendar day the project is not complete beyond 16 weeks from notice to proceed. For liquidated damages to be assessed, the Owner must notify the Contractor in writing of the Owner's intention to claim liquidated damages prior to the time such liquidated damages begin to accrue.

A performance bond and a labor and material payment bond for 100% of the contract price will be required prior to beginning work.

Prior to beginning work, Contractor shall provide a certificate of insurance naming the Town of Blacksburg as additional insured with respect to this project. See Section IV General Conditions, B, 10 for insurance requirements.

## VII. SPECIFICATIONS / SCOPE OF WORK

**Bidders must complete the Contractor's Statement of Qualifications form, the Buy America Certification form, the Government-Wide Debarment and Suspension form, and the Certifications and Restrictions on Lobbying form to be submitted with your bid.**

Blacksburg Transit is soliciting quotes from contractors to complete construction of a new bus pull-off at BT bus stop #1433, near 1201 Patrick Henry Drive. The stop is located on Patrick Henry Drive between Progress Street and Mary Jane Circle, Eastbound. Current conditions can be found in **Appendix A**.

The bus pull-off shall be constructed according to the site development plan; this information can be found on the Town's FTP site at: <https://townofblacksburg.box.com/s/d3rwjdup35axgfn6cr0591i0cv2x18lg>.

Coordination and communication with BT regarding the schedule of the project, impacts to the traffic flow, accessibility of the stop, etc. is required. The contractor is responsible for obtaining all necessary equipment, materials, approvals, permits, inspections and testing, coordination and/or relocation of utilities, coordination and approval of temporary traffic flow changes/lane closures, etc.

### **Davis-Bacon & the Copeland "Anti-Kickback" Act**

Blacksburg Transit is a recipient of federal funds; the Davis-Bacon Act and the Copeland "Anti-Kickback" Act apply to this procurement. Wage Determination #VA20240180 is included in **Appendix B**. For assistance understanding the Wage Determination Guide, please refer to:

<https://www.dol.gov/sites/dolgov/files/WHD/davis-bacon/Conformance.pdf>

The contractor and any subcontractor are required to maintain payroll and basic employee records for all laborers during the course of the work and for a period of three years thereafter. The contractor and any subcontractors must, on a weekly basis complete form Wh-347 for Davis-Bacon Compliance (**Appendix C**) and provide BT with a copy of all payrolls for the preceding weekly payroll period along with a statement certifying compliance. Additional guidance can be found here: <https://www.dol.gov/agencies/whd/government-contracts/construction/guidance>

### **Cost**

Please provide a lump sum bid, inclusive of all costs required for the project listed in the scope. The contract will be awarded to the lowest responsible and responsive bidder, providing sufficient funding is available.

### **Timeline**

The project must be completed within 16 weeks from time notice to proceed is issued.

**Appendix A: Overhead images of bus pull-off area at bus stop #1433**



**Figure 1.** Overhead image-snip of existing conditions at Patrick Henry Drive Eastbound bus stop #1433, (from google.com showing 1201 Patrick Henry Drive)

**Appendix B: Wage Determination**

**General Decision Number: VA20240180 01/05/2024**

**Superseded General Decision Number: VA20230180**

**State: Virginia**

**Construction Type: Highway**

**Counties: Montgomery and Radford\* Counties in Virginia.**

\* including the independent city of Radford

HIGHWAY CONSTRUCTION PROJECTS (excluding tunnels, building structures in rest area projects & railroad construction; bascule, suspension & spandrel arch bridges designed for commercial navigation, bridges involving marine construction; and other major bridges).

**Note:** Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024

ELEC0080-011 12/01/2021

	<b>Rates</b>	<b>Fringes</b>
ELECTRICIAN, Includes Traffic Signalization.....	\$ 30.55	11.51

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 SUVA2016-065 07/02/2018

	<b>Rates</b>	<b>Fringes</b>
CARPENTER, Includes Form Work.....	\$ 17.65	0.00
CEMENT MASON/CONCRETE FINISHER.....	\$ 19.94	0.00
IRONWORKER, REINFORCING.....	\$ 22.71	0.00
IRONWORKER, STRUCTURAL.....	\$ 27.38	0.00
LABORER: Asphalt, Includes Raker, Shoveler, Spreader and Distributor.....	\$ 15.40 **	0.00
LABORER: Common or General.....	\$ 14.33 **	0.00
LABORER: Grade Checker.....	\$ 15.07 **	0.00
LABORER: Pipelayer.....	\$ 15.11 **	0.00
LABORER: Power Tool Operator.....	\$ 15.69 **	0.00
OPERATOR: Backhoe/Excavator/Trackhoe.....	\$ 20.53	0.00
OPERATOR: Bobcat/Skid Steer/Skid Loader.....	\$ 19.16	4.45
OPERATOR: Broom/Sweeper.....	\$ 14.32 **	0.25
OPERATOR: Crane.....	\$ 25.82	0.00
OPERATOR: Drill.....	\$ 24.66	0.00

OPERATOR: Gradall.....	\$ 18.65	0.00
OPERATOR: Grader/Blade.....	\$ 26.13	0.00
OPERATOR: Hydroseeder.....	\$ 16.64 **	0.00
OPERATOR: Loader.....	\$ 22.22	0.00
OPERATOR: Mechanic.....	\$ 19.59	0.00
OPERATOR: Milling Machine.....	\$ 23.12	3.60
OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 16.66 **	0.00
	<b>Rates</b>	<b>Fringes</b>
OPERATOR: Piledriver.....	\$ 21.83	4.08
OPERATOR: Roller (Finishing).....	\$ 14.85 **	0.00
OPERATOR: Roller.....	\$ 15.85 **	0.00
OPERATOR: Screed.....	\$ 22.13	4.89
OPERATOR: TRACTOR (UTILITY).....	\$ 15.18 **	0.00
OPERATOR: Asphalt Spreader and Distributor.....	\$ 17.25	0.00
OPERATOR: Bulldozer, Including Utility.....	\$ 17.81	0.00
TRAFFIC CONTROL: Flagger.....	\$ 11.45 **	0.00
TRUCK DRIVER: HEAVY 7CY & UNDER.....	\$ 15.36 **	0.00
TRUCK DRIVER: 1/Single Axle Truck.....	\$ 15.19 **	0.00
TRUCK DRIVER: Fuel and Lubricant Service.....	\$ 18.25	0.00
TRUCK DRIVER: HEAVY OVER 7CY.....	\$ 16.69 **	0.00
TRUCK DRIVER: MULTI AXLE.....	\$ 16.19 **	0.00

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

**Note:** Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

### **Union Rate Identifiers**

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

### **Survey Rate Identifiers**

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of

Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

### **Union Average Rate Identifiers**

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

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### **WAGE DETERMINATION APPEALS PROCESS**

1.) Has there been an initial decision in the matter? This can be:

- an existing published wage determination
- a survey underlying a wage determination
- a Wage and Hour Division letter setting forth a position on a wage determination matter
- a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

**Appendix C: Form Wh347 for Davis-Bacon Compliance**

**U.S. Department of Labor**  
 Wage and Hour Division

**PAYROLL**

**For contractor's optional use; see instructions at [dol.gov/agencies/whd/forms/wh347](http://dol.gov/agencies/whd/forms/wh347)**



**WAGE AND HOUR DIVISION**  
 Revised December 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR  OR SUBCONTRACTOR  ADDRESS: \_\_\_\_\_ OMB No. 1235-0008 Expires 09/30/2026

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY AND DATE			(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS			(9) NET WAGES PAID FOR WEEK	
			HOURS WORKED EACH DAY						FICA	WITH-HOLDING TAX	OTHER		TOTAL DEDUCTIONS
			MON	TUE	WED								

FOR WEEK ENDING \_\_\_\_\_ PROJECT AND LOCATION \_\_\_\_\_ PROJECT OR CONTRACT NO. \_\_\_\_\_

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(e). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210