TOWN OF VIENNA, VIRGINIA

EAST STREET NE SIDEWALK CONSTRUCTION

CONTRACT NUMBER: IFB 13-07

UPC 96717

INVITATION FOR BID

IFB NUMBER: **IFB 13-07**

IFB SUBJECT: **EAST STREET NE SIDEWALK CONSTRUCTION**

BID DUE DATE: **January 8, 2013 at 11:00 AM**

PUBLIC OPENING: OFFICE OF THE PURCHASING AGENT
127 CENTER STREET, SOUTH
VIENNA, VIRGINIA 22180

Inquiries concerning contractual matters of this Invitation For Bid shall be submitted, in writing, to:

Purchasing Agent
127 Center St. S.
Vienna, VA 22180
ggilpin@viennava.gov

NOTICE TO RECIPIENT

Your name appears on the Town of Vienna bidders listing or has been identified as a potential bidder desiring to receive Invitations for Bid for the commodity/service named above. Failure to respond to this invitation with either a bid proposal or a "no bid" may result in the removal of your firm's name from the referenced commodity/service listing. If "no bid", state the reason and return the bid form to the Purchasing Agent.

PURPOSE:

The purpose of this Invitation for Bid is to establish a contract for placing fill and constructing sidewalk behind the existing curb on the east side of East Street NE, between Maple Avenue and Church Street, in front of the Wolftrappe Square Townhouses. The Association supports the project and has signed a temporary easement for the project. Tree removal will be performed by Town crews.

On the above date and at the time specified, bids so received will be publicly opened and read aloud.

This IFB may be downloaded from the Town's website at: www.viennava.gov

The link to the construction plans for this IFB is on our website at:
http://www.viennava.gov/DocumentView.aspx?DID=983 and
http://www.viennava.gov/DocumentView.aspx?DID=984

The Town of Vienna reserves the right to reject any and all bids or to accept the bid(s) which, in its judgment, will be for its best interest.

NO BID MAY BE WITHDRAWN FOR A PERIOD OF SIXTY (60) DAYS SUBSEQUENT TO THE DATE OF THE BID OPENING.

Any bid may be withdrawn PRIOR to the scheduled time for bid opening or authorized postponement thereof.

Envelopes shall be clearly marked on the outside, "SEALED BID" and show the IFB number, IFB subject, opening time, opening date, and Contractor's Registration Number (if applicable).

TOWN OF VIENNA

IFB 13-07

EAST STREET NE SIDEWALK CONSTRUCTION

TABLE OF CONTENTS

SECTION A	INFORMATION FOR BIDDERS	A-1 to A-17
SECTION B	MANDATORY TERMS, CONDITIONS AND SPECIFICATIONS.....	B-1 to B-3
SECTION C	OWNER-CONTRACTOR AGREEMENT	C-1 to C-4
SECTION D	GENERAL CONDITIONS	D-1 to D-58
SECTION E	TOWN OF VIENNA GENERAL TERMS AND CONDITIONS	E-1 to E-9
SECTION F	SUPPLEMENTAL/SPECIAL CONDITIONS	F-1 to F-2
SECTION G	FORM OF BID.....	G-1 to G-13
SECTION H	ESCROW AGREEMENT	H-1 to H-3
APPENDIX A	RELEASE AND REQUEST FOR FINAL PAYMENT FORM	

SECTION A

INFORMATION FOR BIDDERS

A-I. SUBMISSION OF BIDS AND BID OPENING

A. Bids will be received by the Town of Vienna, Virginia (Town) and will be opened and read at the times and places set forth in the Advertisement for Bid. Pre-qualified bidders, or their representative, and other interested persons may be present at the opening of proposals.

B. Bidders must use the attached Official Bid Form to submit their bid. All bids must show unit price, if applicable, and total price. **All bidders must return TWO (2) copies of the Official Bid Form as well as any issued addendums or any other documentation considered to be part of the Bid Package. Keep a copy of the IFB for your files and do not submit it with the Bid Package.** By signing the Official Bid Form, the bidder acknowledges they have read this solicitation, understand it, and agree to be bound by its terms and conditions. Bids may be submitted by mail or delivered in person.

C. The signed bids must be returned in a sealed envelope and identified as follows: "SEALED BID", show the IFB number, IFB subject, opening time, opening date, and bidder's name and address. The bids must be received at the following location before date and time specified:

Office of the Purchasing Agent
127 Center Street S
Vienna, VA 22180

D. The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids. **BIDS RECEIVED AFTER THE DATE OR TIME OF OPENING WILL NOT BE CONSIDERED FOR CONTRACT AWARD AND SHALL BE RETURNED TO THE BIDDER.**

Bidders are reminded that changes to the IFB, in the form of addenda, are often issued between the issue date and within three business (3) days before the closing of the IFB. Bidders are solely responsible for checking the Town website to insure that they have the most current information regarding the IFB.

A-2. BIDDING DOCUMENTS

A. Bidding Documents include the Advertisement for Bid, Information for Bidders, Form of Bid, the Bid Bond and the proposed Contract Documents, including any Addenda issued prior to receipt of bids. All requirements and obligations of the Bidding Documents are hereby incorporated by reference into the Contract Documents and are binding on the Successful Bidder upon Award of the Contract.

B. Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement for Bid in the number and for the price, if any, stated therein.

C. Bidders shall use complete sets of Bidding Documents in preparing Bids; the Town shall not assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

D. The Town in making copies of the Bidding Documents available on the above terms does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant for any other use.

A-3. DEFINITIONS

A. THE BID: A Bid is a complete and properly signed proposal to do the Work or designated portion thereof for the sums stipulated therein, submitted in accordance with the Bidding Documents.

B. BASE BID: The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which work may be added or from which work may be deleted for sums stated in Alternate Bids, if any.

C. ALTERNATES: An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

A-4. QUALIFICATION OF BIDDER

A. The Successful Bidder shall perform at least that percentage of the Work specified in Article 7 of the Town-Contractor Agreement, with forces that are in the direct employment of the Contractor's organization. If requested by the Town, prior to the signing of the contract, the successful Bidder shall submit a statement of work to be performed by his own forces.

B. Prior to Contract award or within seven (7) days of the Town's request to do so, the successful Bidder shall be prepared to demonstrate that his present organization, direct labor force and prior work experience is of adequate size and development to maintain responsible control of the project and to schedule, coordinate and perform the Work in an expeditious manner and in accordance with the Contract Documents.

C. Bidders, whether residents or nonresidents of Virginia, will be required to show evidence of a certificate of registration as required by Chapter 11 of Title 54.1 of the Code of Virginia before their bids will be considered. If a bid is $70,000 or more, or if the Contractor's annual volume is $500,000 or more, the Contractor must be licensed as a "Class A Contractor". If a bid is $7,500 or more but less than $70,000, the Contractor must be licensed as at least a "Class B Contractor". The Bidder shall place on the outside of the envelope containing the bid and shall place in the bid, at the place provided, whichever of the following three notations is appropriate:

1. "Licensed Class A Virginia Contractor No. _____"

2. "Licensed Class B Virginia Contractor No. _____".

3. "Contract is less than $7,500 therefore licensure is not required".

D. The Town will consider, in determining the qualifications of a Bidder, his record in the performance of any contracts for the construction work into which he may have entered with the Town or with such public bodies or corporations. The Town expressly reserves the right to reject the bid of any Bidder if such record discloses that such 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, material men, suppliers or employees.

E. The Town may make such investigation as he deems necessary to determine the ability of the Bidder to perform the Work, and the Bidder shall furnish to the Town all such information and data for his purpose as he may request. The Town reserves the right to reject any bid if the evidence submitted by, or investigation of such Bidder, fails to satisfy the Town that such Bidder is a responsive and responsible Bidder in accordance with the criteria set forth herein. Conditional bids will not be accepted.

A-5. BIDDER'S REPRESENTATIONS

Each Bidder, by submitting his Bid, represents that:

A. He has read and understands the Bidding Documents and his Bid is made in accordance therewith; and Bidder agrees to be bound by the terms and requirements set forth in the Bidding and Contract Documents;

B. He has visited the site, has familiarized himself with the local conditions under which the Work is to be performed in accordance with Article A-8 and has correlated his observations with the requirements of the proposed Contract Documents;

C. His Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception; and

D. He has the capability, in all respects, and the moral, ethical and business integrity, reliability, technical ability, financial resources, plant, management, superintendents, equipment and materials which will assure effective and efficient good faith performance in full compliance with the Contract Documents and with any and all schedules and Milestone and Completion dates required by the Town. The Bidder acknowledges and represents that he has made allowances for normal inclement weather indigenous to the Project Site, in his estimating, planning and scheduling of the Work. The Bidder further acknowledges that the Contract Documents are, in his opinion, appropriate and adequate for completing this project and for the construction of sound and suitable Work. The Bidder hereby certifies that the Work shall be completed, in place, in full accordance with the Contract Documents, within the time limits specified.

A-6. BID SECURITY

A. Each bid must be accompanied by (1) cash; or (2) a Cashier's Check or a Certified Check of the Bidder made payable to the Town of Vienna; or (3) a bidder's bond on the Bid Bond Form provided herein or on a similar form which in every respect materially complies with said Bid Bond form. The amount of this bid security will be 2½% of the bid amount for bids of $100,000 or less, and 5% of the bid amount for bids greater than $100,000. For purposes of this provision, the amount of the bid shall be the Base Bid plus all positive amount alternates. The bidder's bond shall be issued by a surety company licensed to conduct business in Virginia and acceptable to the Town.

B. Said bid security is given as a guarantee that the Bidder will enter into a contract if awarded the Work and, in the case of refusal or failure to so enter into said contract, the security shall be declared forfeited to the Town. Such security shall be returned to all but the three lowest Bidders within three days after the opening of bids and the remaining security will be returned within 48 hours after the Town and the successful Bidder have executed the Contract. If no Contract has been awarded or the Bidder has not been notified of the acceptance of his bid, within forty-five (45) days of the bid opening, the Bidder may withdraw his bid and request the

return of his bid security. If, at the Town's request, the Bidder agrees to extend and maintain his bid beyond the specified 45 days, his bid security will not be returned.

C. The Bidder's Cash, Certified or Cashier's Check or Bid Bond shall be accompanied by a written guarantee by a surety company licensed to do business in Virginia and acceptable to the Town, that in the event a contract is awarded to the Bidder, said surety will furnish the required Performance, Labor and Material Payment and Guarantee Bonds, as required herein.

A-7. LIQUIDATED DAMAGES

The Successful Bidder, upon his failure or refusal to execute the Contract within fifteen (15) days after he has received notice of the acceptance of his bid, shall forfeit to the Town the security deposited with his bid, as liquidated damages for such failure or refusal.

A-8. SITE CONDITIONS AND CONDITIONS OF WORK

A. Each Bidder must acquaint himself thoroughly as to the character and nature of the Work to be done. Each Bidder furthermore must make a careful examination of the site of the Work and inform himself fully as to the difficulties to be encountered in the performance of the Work, the facilities for delivering, storing and placing materials and equipment, and other conditions relating to construction and labor.

B. Except where subsurface and/or latent conditions at the site are determined in accordance with paragraph 11.9 of the General Conditions to be materially different than those shown on the drawings or indicated in the contract documents, the Successful Bidder, assumes all risk as to the nature and behavior of the soil or subsurface conditions which underlie the Work or is adjacent thereto, or difficulties that may be due to any unfavorable conditions that may be encountered in the Work, whether apparent on surface inspection or disclosed after construction begins.

C. No plea of ignorance of conditions that exist prior to submission of bids, or may hereafter exist on the site of the Work subsequent to the Notice to Proceed, or difficulties that may be encountered in the execution of the Work, as a result of failure to make necessary investigations and examinations, will be accepted as an excuse for any failure or omission on the part of the successful Bidder to fulfill in every detail all the requirements of the Contract Documents and to complete the Work for the consideration set forth therein, or as a basis for any claim whatsoever.

D. Insofar as possible, the Successful Bidder, in carrying out his Work, must employ such methods or means as will not cause interruption of or interference with the Work of the Town or any separate contractor.

A-9. BIDDER'S QUESTIONS, ADDENDA AND INTERPRETATIONS

A. Bidders and Sub-bidders shall promptly notify the Town of any ambiguity, inconsistency or error which they may discover upon examination of the Bidding and Contract Documents or of the site and local conditions. No interpretation of the meaning of the drawings, specifications or other contract documents will be made to any Bidder orally.

B. Every request for such interpretation should be in writing addressed to the Purchasing Agent, Vienna, Virginia, and to be given consideration must be received at least seven (7) days prior to the date fixed for the opening of the bids.

C. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the Bidding Documents which, if issued, will be mailed to all prospective Bidders (at the respective addresses furnished for such purposes) not later than three (3) calendar days prior to the date fixed for the opening of bids. The Town will not be responsible for any other explanations or interpretations of the proposed documents. Failure of any Bidder to receive any such addendum or interpretation shall not relieve any Bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

D. If the Bidder (or any person bidding to Bidder and/or subsequently in contract with the Bidder, relating to the subject project) knows, or should have known, that an ambiguity, discrepancy, error, omission or conflicting statement exists in the Bidding or Contract Documents, said Bidder (or sub-bidder) has an obligation to seek a clarification thereof from the Town prior to bid. The Town will welcome such a clarification request, and, if deemed necessary by the Town, the Town will issue a written addendum clarifying the matter in question. Should the Bidder fail to seek such a clarification prior to bid, Bidder thereby assumes the risk of loss related to such ambiguity, discrepancy, error, omission or conflicting statement which the Bidder (and any person bidding to Bidder and/or subsequently in contract with Bidder, relating to the subject project) knew or should have known existed at the time of bid.

E. Each Bidder shall ascertain prior to submitting his bid that he has received all Addenda issued, and he shall acknowledge receipt and inclusion in his proposal of all Addenda.

A-10. PERFORMANCE AND PAYMENT BOND

The following bonds or surety shall be delivered to the Purchasing Agent within ten (10) days of notification of award and PRIOR to the commencement of any work and shall become binding on the parties upon the execution of the Contract:

A performance bond satisfactory to the Town, executed by a surety company authorized to do business in Virginia or otherwise secured in a manner satisfactory to the Town, for the faithful performance of the Contract in strict conformity with the plans, specifications and conditions of the Contract Documents. The bond shall be in an amount equal to 100% of the price specified in the contract; and a payments bond satisfactory to the Town, executed by a surety company authorized to do business in Virginia or otherwise secured in a manner satisfactory to the Town, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the Contract Documents. Labor and materials shall include public utility services and reasonable rentals of equipment, but only for the periods when the equipment rented is actually used at the site. The bond shall be in an amount equal to 100% of the price specified in the contract.

A prime contractor shall not be precluded from requiring each subcontractor to furnish a payment bond with surety thereon in an amount equal to 100% of the contract with such subcontractor.

A-11. CONTRACT PERIOD

1. The period of this contract shall be from the date of award and shall be in effect until work is completed and accepted by the Town. Time of completion is set forth in Section D, Article 4.11, Construction Schedule.

A-12. TIME FOR COMPLETION AND LIQUIDATED DAMAGES FOR NON-COMPLETION

The time for completion of this Contract and liquidated damages for non-completion within the stipulated time shall be as fixed in the Town-Contractor Agreement.

A-I3. LOCATION OF WORK

The site of the proposed Work is: the east side of East Street NE, between Maple Avenue and Church Street, in front of the Wolftrappe Square Townhouses.

A-I4. LIABILITY INSURANCE AND WORKMEN'S COMPENSATION

The Successful Bidder will be required to carry public liability and workmen's compensation and other insurance in the amounts and under the terms stipulated under Article II of the General Conditions.

A-15. BIDDERS REFERRED TO LAWS

A. The attention of Bidders is called to the provisions of all Municipal, County and State laws, regulations, ordinances and resolutions, including but not limited to, the Virginia Human Rights Act; the Equal Opportunity, Small and Minority Business Enterprises and the Construction Safety Resolutions; as well as laws, regulations, ordinances, resolutions and permits relating to obstructing streets, maintaining signals, storing and handling of explosives, or affecting the Bidder, or his employees or his Work hereunder in his relation to the Town or any other person. The Bidder shall obey all such laws, regulations, ordinances, permits or resolutions controlling or limiting Contractors while engaged in the prosecution of Work under this Contract.

B. The provisions of this Contract shall be interpreted in accordance with the laws of Virginia and in accordance with the laws, ordinances, regulations, permits and resolutions of the Town of Vienna.

A-16. TAXES

All applicable Federal, State and Local Taxes shall be included in the Bidder's proposal.

A-17. RIGHT TO REJECT BIDS

The Town expressly reserves the right to reject any or all bids, to waive any informalities or irregularities in the bids received, and to accept that bid which in its judgment, best serves the interest of the Town.

A-I 8. EQUAL PRODUCTS AND SUBSTITUTIONS

A. Unless otherwise provided in the Contract Documents, the naming of a certain brand, make, manufacturer or article, device, product, material, fixture, form or type construction by name, make or catalog number, shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. Any Bidder, in such cases, may, with Town approval, use any article, device, product, material, fixture, form or type

of construction which in the judgment of the Town is equal to that specified considering quality, workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the project. Approval by the Town prior to bid opening will be in the form of an Addendum to the Specifications issued to all prospective Bidders indicating that the additional makes or brands are equivalent to those specified.

B. Equal Products and Substitutions Prior to Bid Opening

1. To obtain such approval on makes or brands of material other than those specified in Contract Documents, the Bidder shall submit his requests with adequate supporting technical data, as required below, to the Town not less than ten (10) days before the bid opening;

2. The Bidder's request for approval of any equal product or substitution shall include:

a. Itemized comparison of proposed equal product or substitution with product or method specified;

b. Product identification, including manufacturer's name, street address, email address if applicable and phone number;

c. Manufacturer's literature showing complete product description, performance and test data, and all reference standards;

d. Samples and colors in the case of articles or products;

e. Name and address of similar projects on which the product was used and date of installation;

f. For construction methods, include a detailed description for proposed method and drawings illustrating same, and

g. A certification form, notarized prior to bid, entitled "Bidder's Request for Equal Product or Substitution and Bidder's Representations", contained in the Form of Bid. If approved by an Addendum, said form shall be resubmitted by the Bidder and all other Bidders that desire to use the same product or substitution in their Bid packages, at the time of bid.

C. The decision of the Town regarding the approval of items as equal products or substitutions will be final.

D. No change in brand or make from the originally specified item or approved equal product or approved substitution will be permitted unless satisfactory written evidence is presented to and approved by the Town.

E. The Bidder may request approval for equal products or substitutions after award of the Contract in accordance with the provisions of Article 4 of the General Conditions.

F. Equal products or substitutions will not be considered for approval by the Town prior to or after award of the Contract if acceptance of the proposed equal product or substitution will require substantial design revisions to the Contract Documents or is otherwise not acceptable to the Town.

G. Equal products or substitutions will not be considered for approval by the Town after award of the Contract if the proposed item is indicated or implied on shop drawings or product data submittals and has not been formally submitted for approval by the Bidder in accordance with the above-stated requirements.

H. Bidders, other than the bidder who requested a particular equal product or substitution, that choose to utilize that equal product or substitution, as approved by addendum, shall comply with the submittal requirements of Article A-17 subparagraph B.2.g herein. All provisions

herein and in the General Conditions regarding the use of said equal product or substitution shall apply to all Bidders who choose to utilize said equal product or substitution.

A-19. PREPARATION AND SUBMITTAL OF FORM OF BID

A. Bids shall be submitted utilizing the Form of Bid as found herein, or otherwise provided with the Contract Documents, and shall be complete in every respect. The total bid amount shall be entered in words and figures in the appropriate spaces provided. Where applicable, the unit price or lump sum items, and their extensions, shall be entered in figures in the respective columns provided for each bid item. All entries shall be typewritten or legibly printed in ink. The signatures of all persons shall be in longhand. Any entry of amount that appears on the face of the bid to have involved an erasure, deletion, white-out and/or substitution or other such change or alteration, shall show by them the initials of the person signing the bid and the date of the change or alteration. A failure to comply with this requirement may be cause for disqualification of the bid.

B. For Unit Price bids, in the event of any discrepancies between the unit prices and the extensions thereof or the total bid amount, the unit prices shall govern. For Lump Sum bids, in the event of a discrepancy between the bid amount in writing and that in figures, the written value shall govern.

C. Bids shall not contain any restatement or qualifications of Work to be done. Alternate bids will not be considered unless specifically called for. No oral, telegraphic or telephonic bids or modifications will be considered.

D. Bids shall be delivered to the Town on or before the day and until the beginning of the hour set for the receipt of bids, enclosed in a sealed envelope and bearing the Solicitation number (IFB or RFP), title of the Work, name of Bidder and Bidder's registration number.

E. The Bidder will complete Section G - FORM OF BID in the following manner:

1. Sheet G-1

   a. At "From": Enter name and legal address of firm submitting bid,

   b. Item A: Enter the total amount of the bid in words and figures,

2. Sheet G-2

   Item D: Enter date of receipt of addenda and initial as indicated thereon,

3. Sheet G-3

   a. Item H.1: Enter full legal name of the firm. Indicate type of business entity in subparagraph a, b or c,

   b. Item H.2: Insert Bidder Virginia State Registration Number and Class of licensure, "A" or "B",

   c. Item H.3: Fill in signature, name (typewritten or legibly printed), title or position of principal signing the bid, and date of signature and affix Corporate Seal along the right hand margin,

   d. Item I: Fill in all names and addresses of individuals interested as principals in this proposal,

4. Sheet G-4 and G-5

   The enclosed Bid Bond Form is to be filled in completely, signed, sealed and notarized by both the Principal and the Surety and the appropriate Power(s) of Attorney attached,

5. Sheet G-6

   a. Enter the name and address of the Bidding Firm,

   b. List all safety violations, as described in Article A-22 herein,

   c. The Principal shall sign the Certification and affix the Corporate Seal,

   d. The signature of the Principal shall be attested by an appropriate Notary,

6. Sheet G-7

   The appropriate Acknowledgment of Principal of Bidder, must be fully completed and notarized with the Notarial Seal affixed,

7. Sheet G-8

   The Small and Minority Business Data information form must be completed,

8. Sheet G-9

   The Contract Bond Certification shall be filled out and signed by the Bidder's Surety,

9. Sheet G-10 and G-11 (if applicable)

   All Bidders that desire to utilize an equal product or other substitution which has been approved in an Addendum shall submit this form for each separate substitution, notarized, at the time of bid submittal,

10. Sheet(s) G-12-15 (if applicable)

    Form of Bid form must be completed in full and executed. If applicable the form(s) attached for Alternate Bids and/or Unit Prices must be completed in full.

A-20. MODIFICATION OR WITHDRAWAL OF BID

A. 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. The Bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original Work papers with such notice.

   Work papers, documents, and materials submitted in support of a withdrawal of bids may be considered as trade secrets or proprietary information.

B. Prior to the time and date designated for receipt of bids, any bid submitted may be modified or withdrawn by notice to the party receiving bids at the place designated for receipt of bids. Such notice shall be in writing over the signature of the Bidder.

C. Withdrawn bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with this Information for Bidders.

D. Bid security, if any is required, shall be in an amount sufficient for the bid as modified or resubmitted.

E. A decision denying withdrawal of bid pursuant to Article A-19A herein shall be final and conclusive unless the Bidder institutes legal court action within ten (10) days after receipt of the decision.

F. If it is determined by the Courts that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid and return of his bid security.

A-21. NONCONFORMING TERMS AND CONDITIONS

If the bidder submits alternate terms and conditions with the bid that do not conform to the terms and conditions in this solicitation, the bid is subject to rejection as non-responsive. The Town reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid prior to a determination by the Town of non-responsiveness as a result of the submission of nonconforming terms and conditions.

A-22. EXCEPTIONS

Bidders taking exception to any part or section of this solicitation, including, by way of illustration and limitation, the Specifications, General Terms and Conditions, the Mandatory Terms and Conditions, and any attachments or references hereto, shall indicate such exceptions on the Bid Forms. Failure to indicate any exceptions shall be interpreted as the bidder's intent to fully comply with the solicitation as written. However, conditional or qualified bids with such exceptions, unless specifically allowed in the solicitation, are subject to rejection in whole or in part as non-responsive.

A-23. CONSTRUCTION SAFETY

A. It shall be required that each bid submitted to the Town for a contract for construction, alteration, and/or repairs, including painting or decorating of a building, highway, street, bridge, sidewalk, culvert, sewer, excavation, grading, or any other construction, include a list of all the following actions which have become final in the three years prior to the bid submission:

1. Willful violations, violations for failure to abate, or repeated violations, for which the bidder was cited by (a) the United States Occupational Safety and Health Administration; (b) the Virginia Department of Labor and Industry; or (c) the occupational safety and health plan for any other state; or

2. Three (3) or more serious construction safety violations for which the bidder was cited by the (a) United States Occupational Safety and Health Administration; or (b) the Virginia Occupational Safety and Health Administration; or (c) the occupational safety and health plan from any other state.

3. Termination of a contract between the Contractor and the Town by the purchasing agent or his designee for safety violations.

If the bidder has not received or been the subject of any such violations in the three (3) years prior to the bid submission, then the bidder shall so indicate by certification on the bid form entitled Certification of Safety Violations. The bidder will also indicate on this form each state in which Work was performed in the three (3) years prior to the bid submission.

B. No Town construction contract, as discussed above, may be bid on by any bidder or contractor who has been the subject of any citations for the type and number of violations listed in aforementioned paragraph A, which have become final within the three (3) years prior to the bid submission.

1. Notwithstanding the language of paragraph B, above, any bidder or contractor who has been the subject of a violation, as described heretofore in paragraph A, which has become final in the three (3) years prior to the bid submission, may bid, after a mandatory twelve (12) months from the date the violation became final, if the bidder or contractor meets the eligibility criteria set forth in paragraph D, below.
2. Notwithstanding the language of paragraph B, above, any bidder or contractor who has been the subject of the type and number of violations as described in paragraph A(2), which have become final within three (3) years prior to bid submission, may bid, after a mandatory waiting period of twelve (12) months from the date the last such violation became final, if the bidder or contractor meets the eligibility criteria in paragraph D, below.
3. Notwithstanding the language of paragraph B, above, any bidder or contractor who has previously been terminated from a Town contract, as described in paragraph A(3), within three (3) years prior to the bid submission, may bid, after a mandatory waiting period of twelve (12) months from the date of termination, if the bidder or contractor meets the eligibility criteria in paragraph D, below.

C. Prior to bidding on a project, under the provisions of paragraph B, above, a Contractor may request that a determination be made by the Town, regarding its eligibility to submit a bid on a contract under the terms of this resolution. However, this request for determination and any subsequent adjudication process must be completed prior to submitting a bid on any project and the request for determination must be received no later than twenty-one (21) days before bids are due unless otherwise stated in the Advertisement for Bid.

D. The criteria used by the Town in reviewing the corrective action taken by a bidder or Contractor to prevent the recurrence of safety violations shall include but not be limited to the following:

- Does the firm have an established safety program? If so, how long has it been in existence?
- Does the firm incorporate safety and health related issues into their new employee orientation programs?
- Does the firm include work safety as a part of an employee's performance evaluation?
- To what degree does senior/corporate management support safety related matters? Does the firm have a safety policy statement signed by a member of senior/corporate management?
- Does the firm have a full time Safety Manager? Does this person report to a high level, authoritative position within the Company?
- Are safety inspections conducted at work sites? If so, how often & by whom?
- Are safety training programs conducted for employees? If so, how often and by whom?
- Are safety meetings conducted on site by the firm? If so, how frequently?
- Does the firm have a visibly active safety committee? If so, how often does it meet? Who serves on the committee?
- Is the firm an active member of a recognized construction safety organization in the Washington Metropolitan area, or in the state of contractor's domicile?
- What is the firm's Workers Compensation Experience Modification Factor? Are there any evident trends?

The determination rendered by the Town shall be final unless it is appealed in accordance with the provisions of the solicitation.

E. It shall be a condition of each Town construction contract, as discussed above, that no Contractor or Subcontractor contracting for any part of the contract Work shall require any laborer, mechanic, or other person employed in the performance of the contract to work in surroundings or under working conditions which are hazardous or unnecessarily dangerous to his safety as determined under construction safety standards promulgated by the U.S. Department of Labor or the Virginia Department of Labor and Industry.

F. No contractor awarded a Town construction contract shall knowingly employ or contract with any person, company, or corporation for services pursuant to that contract if such person, company or corporation could not have been awarded such contract due to the restrictions in paragraph B, above.

A-24. AWARD OF CONTRACT

The Town will make an award on a unit price basis to the lowest responsive and responsible Bidder. Due consideration will be given to price, quality as judged by tests and previous experience, and the ability of the Bidder to render required services. The Town reserves the right to conduct any test it may deem advisable and to make all evaluations. The Town also reserves the right to reject any or all bids, in whole or in part, to waive informalities and to delete items prior to making the award, whenever it is deemed in the sole opinion of the Town to be in its best interest.

A. The Purchasing Agent or her designee, shall have the authority to waive informalities in bids, reject all bids, parts of all bids, or all bids for any one or more goods or services included in a solicitation when in her judgment the public interest may be served thereby. If separate bids are received for the same total amount or unit price (including authorized discounts and delivery times) and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent or her designee, is authorized to award that is deemed to be in the best interest of the Town of Vienna.

B. The Lowest Bidder is determined by the aggregate amount of the prices set forth in the Form of Bid, plus any Alternates selected by the Town.

C. A Responsive Bidder shall mean a Bidder who has submitted a Bid which conforms, in all material respects, to the Bidding Documents.

D. A Responsible Bidder shall mean a Bidder who has the capability, in all respects, to perform fully the Contract requirements and the moral, ethical and business integrity and reliability which will assure good faith performance. In determining responsibility, the following criteria will be considered:

1. The ability, capacity and skill of the Bidder to perform the contract or provide the service required;

2. Whether the Bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

3. The character, integrity, reputation, judgment, experience and efficiency of the Bidder;

4. The quality of performance during previous contracts or services. For example the following information will be considered:

   a. The administrative and consultant cost overruns incurred by Towns on previous contracts with Bidder,

   b. The Bidder's compliance record with Contract General Conditions on other projects,

   c. The submittal by the Bidder of excessive and/or unsubstantiated extra cost proposals and claims on other projects,

d. The Bidder's record for completion of the Work within the Contract Time or within Contract Milestones and Bidder's compliance with scheduling and coordination requirements on other projects,

e. The Bidder's demonstrated cooperation with the Town, A/E and other contractors on previous contracts,

f. Whether the work performed and materials provided on previous contracts was in accordance with the Contract Documents;

5. The previous and existing compliance by the Bidder with laws and ordinances relating to contracts or services;

6. The sufficiency of the financial resources and ability of the Bidder to perform the contract or provide the service;

7. The quality, availability and adaptability of the goods or services to the particular use required;

8. The ability of the Bidder to provide future maintenance and service for the warranty period of the contract;

9. Whether the Bidder is in arrears to the Town on debt or contract or is a defaulter on surety to the Town or whether the Bidder's taxes or assessments are delinquent;

10. Such other information as may be secured by the Director of Public Works or his designee, having a bearing on the decision to award the contract, to include, but not limited to:

a. The ability, experience and commitment of the Bidder to properly and reasonably plan, schedule, coordinate and execute the Work,

b. Whether the Bidder has ever been debarred from bidding or found ineligible for bidding on any other projects.

E. The purpose of the above is to enable the Town of Vienna, in its opinion, to select the bid which is in the best interests of the Town. The ability of the low Bidder to provide the required bonds will not of itself demonstrate responsibility of the Bidder.

F. The Town reserves the right to require from the Bidder: (1) submissions of references, within seven (7) days of bid opening, to include a listing of previous and current projects and (2) financial statements indicating current financial status, prepared in accordance with generally accepted accounting principles, by a CPA licensed to do business in Virginia.

G. The Town reserves the right to defer award of this contract for a period of sixty (60) days after the due date of bids. During this period of time, the Bidder shall guarantee the prices quoted in his bid.

A-25. APPEAL OF DETERMINATION OF NONRESPONSIBILITY

A. Any Bidder who, despite being the apparent low bidder, is determined not to be a responsible Bidder for a particular Town contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the Bidder institutes legal court action within ten (10) days of receipt of the notice.

B. If it is determined by the Courts that the decision of the Purchasing Agent, was arbitrary or capricious, or otherwise in error and the award for the particular Town contract in question has not been made, the sole relief available to the Bidder shall be a finding that the Bidder is a responsive or responsible Bidder for the Town contract in question. Where the award has been made and performance has begun, the Town may declare the contract void upon a finding that

this action is in its' best interest. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

A-26. PROTEST OF AWARD OR DECISION TO AWARD

A. Any Bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent or his designee, or other official designated by the Town of Vienna, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first; provided, however, that no protest shall lie for a claim that the selected Bidder or offeror is not a responsible Bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent, shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the Bidder or offeror institutes legal court action in the Town of Vienna within ten (10) days of receipt of the written decision.

B. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent or her designee, shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the Town. Where the award has been made and performance has begun, the Purchasing Agent or her designee may declare the contract void upon a finding that this action is in the best interest of the Town. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Pending final determination of a protest, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

D. An award need not be delayed for the period allowed a Bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

A-27. NEGOTIATION WITH LOWEST RESPONSIBLE BIDDER

INTENTIONALLY OMITTED

A-28. SUBCONTRACTING

If one or more subcontractors are required, the Contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. Upon contract award, the prime contractor agrees to make maximum effort to provide the names and addresses of each subcontractor, that subcontractor's status as defined by the Town of Vienna as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided.

A-29. INTEREST IN MORE THAN ONE BID AND COLLUSION

Multiple bids received in response to a single solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that a bidder is interested in more than one bid for a solicitation

both as a bidder and as a subcontractor for another bidder, will result in rejection of all bids in which the bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two or more bidders submitting a bid for the work. Any or all bids may be rejected if reasonable grounds exist for believing that collusion exists among any bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

A-30. EXPENSES INCURRED IN PREPARING PROPOSAL

The Town accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid, such expenses to be borne exclusively by the bidder.

A-31. NONAPPROPRIATION

All funds for payments by the Town under this Contract are subject to the availability of an annual appropriation for this purpose by the Town Council. In the event of nonappropriation of funds by the Town Council for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, the Town will terminate the Contract, without termination charge or other liability to the Town, on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and the Town shall not be obligated under this Contract beyond the date of termination.

A-32. CONTRACT RENEWAL WITH PRICE ADJUSTMENTS NEGOTIATED UP TO CPI-U

N/A

A-33. COOPERATIVE PROCUREMENT

N/A

A-34. MODIFICATION OF CONTRACT:

The Town may, upon mutual agreement with the contractor, issue written modifications to the scope of work of this contract, and within the general scope thereof, except that no modifications can be made which will result in an increase of the original contract price by a cumulative amount of more than $50,000.00 or 25% whichever is greater, without the advance written approval of the Mayor and Council. (Section 2.2-4309 of Virginia Public Procurement Act).

Should it become necessary for the best interest of the Town to make modifications, the same shall be covered by change order. The Contractor shall not begin work on any alteration requiring a change order until the written agreement, setting forth the changes/modifications, has been executed by the Town and the Contractor.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the Town reserves the right to terminate the contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the work.

The Town may, in writing, omit from the work any item, other than major items, found unnecessary to the project and such omission shall not be a waiver of any condition of the contract nor invalidate any of the provisions thereof. Major items may be omitted by change order.

The Contractor shall be paid for all work done toward the completion of the item prior to such cancellation, alteration or suspension of the work by the Town.

A major item shall be construed to be any item, the total cost of which is equal to or greater than ten percent (10%) of the total; contract amount for each separate alternate, computed on the basis of the proposed quantity and the contract unit price.

A-35. INSURANCE

The Contractor shall provide the Purchasing Agent with a Certificate of Insurance PRIOR to the start of any work under the contract and agrees to maintain such insurance until the completion of the contract. The minimum limits of liability shall be:

Workers' Compensation -- Standard Virginia Workers' Compensation Policy

Broad Form Comprehensive General Liability--$2,000,000.00.

Combined Single Limit coverage to include:

Premises - Operations; Products/Completed Operations;

Contractual; Independent Contractors; Towns and Contractors

Protective; Personal Injury (Libel, Slander, Defamation of Character, etc.)

Automobile Liability--$500,000.00 Combined Single Limit.

The Town of Vienna, Virginia is to be named as an additional insured and this is to be so noted on Certificate of Insurance.

The policy shall be delivered to the Town of Vienna PRIOR to the commencement of any work.

A thirty (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the purchasing office at the address indicated on the solicitation.

My signature on this solicitation constitutes certification that, if I am awarded the contract, I shall obtain the required coverage as specified herein within ten (10) days of notification of award.

A-36. HOLD HARMLESS CLAUSE

Bids shall provide for the contractor holding harmless the Town of Vienna and representatives thereof from all suits, actions, or claims of any kind brought on account of any injuries or damages sustained by any person or property in consequence of any neglect in safeguarding contact work, or on account of any act or omission by the contractor or its employees, or from any claim or amounts arising or recovered under any law, bylaw, ordinance, regulation or decree.

A-37. LAWS AND REGULATIONS

The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

The Contractors and Subcontractors shall comply with the Virginia Contractor's Registration Law, Title 54.1, Chapter 11, Code of Virginia (1950), as amended.

All non-resident Contractors and Subcontractors submitting bids on the work described herein shall register with the Department of Labor and Industry under the provisions of Subsection 40.1-30 of the Code of Virginia (1950), as amended.

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 (1950), as amended, relating to labor unions and the "right to work", and all Contractors and Subcontractors, whether residents or non-residents of the Commonwealth, who perform work related to the project shall comply with all of said provisions.

The Contractor shall furnish the Town copies of affidavits upon request giving original dates, renewal dates and expiration dates of all labor contracts related to any phase of the work to be performed on the job site under this contract.

The provisions of all rules and regulations governing 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 (1950), as amended, shall apply to all work under this contract.

A-38. CONTRACT RATES

N/A

SECTION B
MANDATORY TERMS, CONDITIONS AND SPECIFICATIONS

I. PURPOSE

The purpose of this Invitation for Bid is to establish a contract for sidewalk construction on the east side of East Street NE between Maple Avenue and Church Street, in front of the Wolftrappe Square Townhouses.

II. SCOPE

The scope of this project includes the following items of work on the east side of East Street NE between Maple Avenue and Church Street in front of the Wolftrappe Square Townhouses. The "Plans" refer to the plan package entitled East Street NE Pedestrian Improvements prepared by Rinker Design Associates, P.C., dated 5/17/2012. The construction documents can be found on the Town's website at: http://www.viennava.gov/DocumentView.aspx?DID=983 and http://www.viennava.gov/DocumentView.aspx?DID=984 and are incorporated by reference.

1. Perform a preconstruction survey of the proposed streets to confirm the existing conditions shown in the Plans. The Contractor shall be responsible for existing features within the limits of work that are not shown in the Plans which would require replacement or temporary relocation in order to perform the drainage improvements, roadway and sidewalk rehabilitation. The cost for this work is to be included in the Contractor's unit price bid and within the appropriate unit price categories provided.
2. The Contractor is responsible for all survey layout, utility coordination, material, tools, equipment, labor, permits, traffic control, cleanup and restoration and priced within other unit prices. The Contractor is responsible to restore all existing signs and pavement markings.
3. Locate underground utilities prior to the start of construction. Protect all structures and utilities. The Contractor shall coordinate any adjustments with the appropriate utility owner.
4. Provide maintenance of traffic and construction phasing plan and schedule to be approved by the Town's Engineer prior to starting work on East Street NE. The phasing plan shall ensure that residents have access to their homes during the project. Timing and duration of street closings or detours proposed by the construction contractor must be coordinated and approved in advance by the Department of Public Works.
5. Provide and place all traffic control devices necessary to facilitate the Work.
6. Provide and install erosion and sediment control devices.
7. The Town of Vienna Parks & Recreation Department is responsible for street trees in the Town and will perform all tree removals and replacements on Town property.
8. Remove existing asphalt roadway section, curb, gutter, and sidewalk where indicated on the Plans.
9. Modify at-grade utility appurtenances as indicated in the Plans to match finished grade. The Town of Vienna Water-Sewer Division will relocate any water meters that are not in the utility strip between the curb and sidewalk. If relocation of water service laterals becomes necessary due to excavation as specified in the Plans, the Town will perform relocations. The Contractor shall provide a unit cost (per-hour) in the bid form for a licensed plumber to fix or relocate such conflicts in the event that the Town is not readily available to respond. Correcting sanitary sewer laterals is the contractor's responsibility.
10. Construct concrete sidewalks, curb and gutter and curb ramps as shown on the plans. Concrete shall be VDOT Type A3 with a 28-day compressive strength of 3,000 psi.
11. Clean out all storm sewers after the construction is complete.

12. Provide the following submittals for review by the Town's Engineer:
    a. Maintenance of Traffic/Construction Phasing Plan
    b. Portland Cement Concrete Mix Design
    c. Bituminous Concrete Mix Design
    d. Materials Delivery Tickets
    e. As-built red-line markups of Plans
13. Provide all other work as shown on the plans to complete the sidewalk project.

IV. SPECIFICATIONS

1. References

   Work shall be in accordance with the most recent edition of the following references:

   a. Virginia Erosion and Sediment Control Handbook
   b. Town of Vienna Construction Details
   c. VDOT Road and Bridge Standards and Specifications
   d. Manual of Uniform Traffic Devices

   Where a conflict exists between these referenced specifications, seek direction from the Town's Engineer.

2. Limits of Construction

   The majority of property owners have granted temporary construction easement for the project. Contractor personnel may not enter and no work may be done on properties without temporary construction easements.

3. Submittals

   Preconstruction submittals shall be approved by the Town's Engineer before starting the related Work. Test results shall be received within 7 days of test completion. The Town Engineer shall have up to two weeks to review the submittals. Submittals that are not approved shall be corrected and re-submitted for review. Work may not start until submittals have been approved. If material test results indicate a failure of materials to meet their design strength, the Town may require the Contractor to remove and replace the affected materials at the Contractor's expense.

4. Measurement and Payment

   This is a unit price contract. Measurement of unit price items shall be in accordance with the VDOT Road and Bridge Specifications, Division 1: Section 109 and the following sections where applicable.

   a. The following items are measured in unit prices as defined in their respective section. For incidental Work that falls outside of the description for these categories, the price shall be included within the unit pricing of related items of Work provided in the Bid Form. Units shall be per the units shown on the Bid Form.
      i. Clearing and Grubbing – Section 301.03
      ii. Drainage Structure – Section 302.04
      iii. Excavation – Section 303.06
      iv. Sub-grade – Section 305.04
      v. Sub-base Course – Section 308.05
      vi. Aggregate Base Course – Section 309.06

vii. Tack Coat – Section 310.04

viii. Prime Coat – Section 311.04

ix. Base Course – Section 315.08

x. Top Course – Section 315.08

xi. Curb & Gutter – Section 502.04

xii. Driveway Aprons – Section 502.04

xiii. Sidewalks – Section 504.04

xiv. Pavement Demolition – Section 508.03

xv. Adjusting Existing At-grade Utility Appurtenances – Section 510.04

xvi. Maintaining Traffic – Section 512.04

xvii. Contractor Construction Surveying – Section 517.06

xviii. Mail Box Post – Section 521.04

xix. Selective Tree Removal, Trimming and Cleanup – Section 601.04
(For tree stumps, refer to Clearing and Grubbing – Section 301.03)

xx. Topsoil – Section 602.04

xxi. Sodding – Section 604.04

xxii. Planting – Section 605.07

SECTION C.

OWNER-CONTRACTOR AGREEMENT

CONTRACT NUMBER: IFB 13-07 (P.O. #_____)

THIS AGREEMENT, in 3 copies, is made this _____ day of _____ 20___, by and between The Town of Vienna, Virginia (herein referred to as the "Owner"), whose mailing address is c/o Department of Public Works, 127 Center Street South, Vienna, Virginia 22180, and _____ (herein referred to as the "Contractor"), whose mailing address is as follows, _____. All correspondence, submittals and notices relating to or required under this Contract shall be sent in writing to the above addresses; unless either party is notified in writing by the other, of a change in address.

WITNESSETH:

WHEREAS it is the intention of the Owner to obtain the services of the Contractor in connection with the construction activities of EAST STREET NE SIDEWALK CONSTRUCTION, hereinafter referred to as the "Project" or the "Work"; and WHEREAS the Contractor desires to perform such construction in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises made herein and other good and valuable considerations, the following terms and conditions are hereby mutually agreed to, by and between the Owner and Contractor:

Article 1

DEFINITIONS

1.1 All terms in this Agreement which are defined in the Information for Bidders and the General Conditions shall have the meanings designated therein.

1.2 The Contract Documents are as defined in the General Conditions. Such documents form the Contract, and all are as fully a part thereof as if attached to this Agreement or repeated herein.

Article 2

STATEMENT OF THE WORK

2.1 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

2.2 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the

Contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

Article 3

ARCHITECT/ENGINEER

3.1 The Architect/Engineer (hereinafter referred to as the "A/E" and as defined in the General Conditions) shall be the Director of Public Works or his designee, whose address is 127 Center Street South, Vienna, Virginia 22180; provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating different persons or organizations to act as it's A/E and so advising the Contractor in writing, at which time the person(s) or organization(s) so designated shall be the A/E for purposes of this Contract.

Article 4

TIME OF COMMENCEMENT AND COMPLETION

4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed for each task assigned under this contract. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.

4.2 Time is of the essence. The Contractor shall complete each task assigned, as defined in the General Conditions within the limits established in the Notice to Proceed or the date otherwise established for the commencement of Work. This time period shall be designated the Contract Time as set forth in Section D, Article 4.11, Construction Schedule.

4.3 The liquidated damages incurred by the Owner due to the Contractor's failure to complete the Work within the Contract Time, including any extensions thereof, shall be $500.00 per day for each consecutive calendar day beyond the Contract Time (Sundays and all holidays included) for which the Contractor shall fail to complete the Work.

4.4 The liquidated damages incurred by the Owner due to the Contractor's failure to complete each activity of Work designated in Article 4.3, above within the applicable interim Milestone date, as applicable, shall be as hereinafter stated for each Milestone, for each consecutive day beyond the Milestone date (Sundays and all holidays included) for which the Contractor shall fail to complete the activity of Work.

4.5 The amount of liquidated damages set forth in Articles 4.4 and 4.5 hereinabove shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions. This provision for liquidated damages does not bar Owner's right to enforce other rights and remedies against Contractor, including but not limited to, specific performance or injunctive relief.

Article 5

CONTRACT SUM

5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified. The amount of each task assigned under this contract will be established prior to issuance of a Notice to Proceed for that task. The total amount of the contract shall not exceed:

_____Dollars (**$_____.00**), herein referred to as the "Contract Sum".

Article 6

PROGRESS PAYMENTS

6.1 The Contractor hereby agrees that on or about the first day of the month for every month during the performance of the Work he will deliver to the A/E a Pay Request Application in accordance with the provisions of Article 9 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions.

Article 7

OTHER REQUIREMENTS

7.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond and Certification of Insurance as required by the Contract Documents.

7.2 The Owner shall furnish to the Contractor, a CD of the drawings and specifications, at no extra cost, for use in the Construction of the Work. Additional sets of drawings or specifications may be obtained by the Contractor by paying the Owner for the costs of reproduction, handling and mailing.

7.3 The Contractor shall perform at least sixty-five percent (65%) of the total Work with forces that are in the direct employment of the Contractor's organization unless a written waiver is obtained by the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written.

TOWN OF VIENNA, VA (Owner)

Attest:

By:_____
Town Clerk, Melanie J. Clark

By: _____
M. Jane Seeman, Mayor

CONTRACTOR:

Witness:

By: _____

By: _____
Contractor (SEAL)

By: _____
_____
_____

State of _____

County of _____, to-wit:

The foregoing instrument was acknowledged before me on this ____ day of _____

20___, by _____ (Name and title of agent or officer) on behalf of (Name of Corporation/Partnership)

_____
Notary Public

My Commission Expires: _____

SECTION D

GENERAL CONDITIONS

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS

1.1.1 CONTRACT DOCUMENTS:

The Advertisement for Bid, Information for Bidders, Form of Bid, Owner-Contractor Agreement, Drawings, General Conditions and Special Conditions and any supplements thereto, Specifications and all Addenda issued prior to and all Modifications issued after execution of the Contract, shall form part of this Contract and the provisions thereof shall be as binding upon the parties hereto as if they were herein fully set forth. Any soils, geotechnical or other reports, surveys and analyses which may be made available to the Contractor for review or information under this Contract, are not adopted by reference into, nor are they part of the Contract Documents. A Modification is (1) a written Amendment to the Contract signed by both parties, (2) a written Change Order signed by both parties (3) a written Field Order or, (4) a Unilateral Change Order issued by the Owner. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light upon the interpretation of the provisions to which they refer.

1.1.2 CONTRACT

The Contract Documents form the Contract for Construction. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or changed only by a Modification. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner, or any agent, consultant, or independent Contractor employed by the Owner and any Subcontractor, Sub-subcontractor, supplier or vendor of the Contractor, but the Owner shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.

1.1.3 WORK

The term “Work” as used herein refers to Work at the site of the project, is that normally done at the location of the project and includes all plant, labor, materials, supplies, fabrication, construction, equipment and other facilities and things necessary or proper for or incidental to the carrying out and completion of this contract. The term “Work” shall be construed to include material suitably stored and protected.

1.1.4 PROJECT

The Project is the total construction of which the Work performed under Contract Documents may be the whole or a part.

1.1.5 FURNISH. INSTALL. PROVIDE

The term "Furnish" shall mean to make available for proof of existence, reproduction and use. "Install" shall mean to incorporate a specific item, product or material into the Work including all necessary labor, equipment, testing and additional materials necessary to make the item ready for use. "Provide" shall, unless specifically limited in context, mean to supply and incorporate a specified item, product or material into the Work; including all necessary labor, additional materials, equipment to perform the Work required for proper installation and testing such that the item is ready for use.

1.1.6 EXTRA WORK

The term "Extra Work" as used herein, refers to and includes Work required by the Owner, which, in the judgment of the Owner and Architect/Engineer (A/E), involves changes in or additions to that required by the drawings, specifications and addenda in their present form.

1.1.7 NOTICE OF AWARD

Notice of Award is defined as the written notice of the acceptance of the FORM OF BID from the Owner to the Successful Bidder.

1.1.8 NOTICE

The term "Notice" as used herein shall mean and include written notice. Written notice shall be deemed to have been duly served when delivered to or at the last known business address of the person, firm or corporation for whom intended, or to his, their or its duly authorized agent, representative or officer; or when enclosed in a postage prepaid wrapper or envelope addressed to such person, firm or corporation at his, their or its last known business address and deposited in a United States mailbox.

1.1.9 MISCELLANEOUS WORDS OR TERMS

Whenever they refer to the Work or its performance, "Directed", "Required", "Permitted", "Ordered", "Designated", "Prescribed", and words of like import shall imply the direction, requirements, permission, order, designation or prescription of the Owner or A/E, and "Approved", "Acceptable", "Satisfactory", "in the judgment of" and words of like import shall mean approved by or acceptable to or satisfactory to or in the judgment of the Owner or A/E.

1.2 EXECUTION CORRELATION AND INTENT

1.2.1 The Owner-Contractor Agreement, shall be signed in not less than the number of copies specified in the said Agreement.

1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one

shall be as binding as if required by all. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.3 Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. Technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any conflict or inconsistency in the drawings shall be submitted by the Contractor to the A/E, with a copy to the Owner, whose decision thereon shall be conclusive. In case of conflict or inconsistency between the drawings and the specifications, the specifications shall govern.

1.2.4 Should any Work or material be required which is not denoted in the drawings and specifications either directly or indirectly, but which is, nevertheless, necessary for the proper carrying out of the intent thereof, it is understood and agreed that the same is implied and required and that the Contractor shall perform such Work and provide such materials as fully as if they were completely delineated and prescribed.

1.2.5 The Contractor may be furnished additional instructions and detail drawings to carry out the Work included in the Contract. The additional drawings and instructions thus supplied to the Contractor will coordinate with the Contract Documents and will be so prepared such 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.

1.2.6 The drawings and specifications are divided into sections for convenience and clarity only. The Contractor shall not construe this as a division of the Work into various subcontractor units. The Contractor may subcontract the Work in such divisions as he sees fit, but he is ultimately responsible for providing all Work shown on the drawings and in the specifications.

1.2.7 The provisions of this Contract cannot be amended, modified, varied or waived in any respect except by a Modification. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from any of the Contractor's duties or obligations under or arising out of this Contract. Any waiver, approval or consent granted by Modification to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All Drawings, Specifications, and memoranda relating to the Work are the property of the Owner and are to be used only for the Project.

1.3.2 The Contractor shall be provided the number of sets of drawings and specifications, as set forth in the Owner-Contractor Agreement, free of charge by the Owner for use in construction. Additional sets of drawings and specifications may be obtained by paying printing, mailing, and handling charges.

ARTICLE 2

ARCHITECT/ENGINEER

2.1 DEFINITIONS

2.1.1 The term Architect/Engineer, hereinafter "A/E" or "Architect" or "Engineer", shall mean the Town of Vienna, a department of the Town, or their duly authorized representative(s) responsible for designing or engineering the Work and performing the activities specified herein. Such department, firm or individual and its representatives shall act severally within the scope of particular duties entrusted to them, unless otherwise provided for in the Contract Documents.

2.1.2 The A/E is identified in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The A/E is further described as one of the following:

2.1.2.1 ARCHITECT, a person or other legal entity lawfully licensed to practice architecture in Virginia.

2.1.2.2 ENGINEER, a person or other legal entity lawfully licensed to practice engineering in Virginia.

2.1.2.3 The Director of Public Works, Town of Vienna, Virginia, or his designee.

2.2. ADMINISTRATION OF THE CONTRACT

2.2.1 The A/E will provide services as hereinafter generally described.

2.2.2 The A/E will be an Owner's representative during construction and until the end of the one year guarantee period. The A/E will advise and consult with the Owner. The Owner's instructions to the Contractor may be forwarded through the A/E. The A/E will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise changed by Modification.

2.2.3 The A/E will visit the site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the A/E will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of his on-site observations as an Architect or Engineer, the A/E will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.

2.2.4 The A/E will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work. The A/E will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The A/E will not be responsible for or have control over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

2.2.5 The A/E will immediately inform the Owner and Contractor whenever in the opinion of the A/E any of the Work is proceeding contrary to the requirements of the Contract Documents and will be unacceptable. Failure of the Contractor to take corrective action to make the Work conform to the Contract Documents

will subject the Contractor to any and all remedies available to the Owner, including, without limitation, termination pursuant to Article 13 hereof. Such notification by the A/E will not be a cause for the Contractor to claim either delay of the Work or any increase in the Contract Sum.

2.2.6 The A/E, the Owner and other governmental representatives, shall at all time, have access to the Work wherever it is in preparation and progress. The Contractor shall provide facilities for such access such that the A/E, the Owner and other governmental representatives may perform their functions under the Contract Documents in a safe and reasonable manner.

2.2.7 Where applicable, based on the A/E's observations and an evaluation of the Contractor's Applications for Payment, the A/E will recommend the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Article 9.

2.2.8 The A/E will be an interpreter of the requirements of the Contract Documents. The A/E will render interpretations necessary for the proper execution and progress of the Work, with reasonable promptness and in accordance with any time limit agreed upon with the Owner. Either party to the Contract may make written request to the A/E for such interpretations. All interpretations of the A/E shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing and/or in the form of drawings.

2.2.9 The A/E will have authority to reject Work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, the A/E will have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.2 whether or not such Work be then fabricated, installed or completed.

2.2.10 The A/E will review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data, Samples and Manuals, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay in the Work. The A/E approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.2.11 The A/E's acceptance of materials or products on behalf of the Owner shall not bar future rejection of such items if they are subsequently found to be defective or inferior in quality, compatibility or uniformity to the materials or products specified by the Contract Documents, or if such items are not as represented by the Contractor.

2.2.12 The A/E has authority to prepare Change Orders authorized by the owner and will have authority to order minor changes in the Work as provided in Article 11.

2.2.13 Inspections will be conducted by the A/E to assist the Owner in determining the dates of Substantial Completion and Final Completion as required. The A/E will receive and forward to the Owner for review, written warranties and related documents required by the Contract and assembled by the Contractor, and will recommend final Certificate for Payment upon compliance with the requirements of Article 9.

2.2.14 All claims, disputes, or other matters or questions between the Contractor and Owner arising out of or relating to the A/E's interpretation of the Contract Documents or any other decisions, communications, or actions of the A/E arising out of or relating to the performance of the Work shall be resolved as set forth in Article 7. Prior to submitting any claim to the Director of Parks and Recreation regarding an interpretation of the A/E, the matter shall first be submitted to the Project Engineer who shall review the matter and render a written interpretation, evaluation or decision, as appropriate, within 30 days of his receipt of the claim, dispute or other matter. If the Project Engineer agrees with the Contractor, the matter shall be resolved in accordance with their agreement. If the Project Engineer disagrees with the Contractor, the Contractor may then present the matter to the Director of Parks and Recreation as set forth in Article 7.

2.2.15 In case of the termination of the employment of the A/E, the Owner shall appoint a new A/E, who shall have the same status under the Contract Documents as the former A/E.

ARTICLE 3

OWNER

3.1 DEFINITIONS

3.1.1 OWNER

The Owner is the Town of Vienna, Virginia and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Owner means the Owner or its authorized representative. The Director of Public Works is the authorized representative of the Town of Vienna for this contract.

3.1.1.1 The term "Owner" or "Owner's representative" specifically excludes any and all inspectors having building code, Town ordinance responsibilities or jurisdiction under the requirements of the Building Permit.

3.1.2 PROJECT MANAGER

The Department of Public Works, Town of Vienna will designate a single Owner's representative designated with the title of Project Manager, who will have the power to act, within the scope of his delegated authority, for and on behalf of the Owner, in accordance with the terms of the Contract.

3.2 INFORMATION POSSESSED BY OWNER

3.2.1 The Owner will make available for the Contractor's reasonable review, at the Owner's offices or together with the Contract Documents, certain boring logs, geotechnical, soils and other reports, surveys and analyses pertaining to the Contract site of which the Owner is aware and has in its possession. Any boring logs that are provided to the Contractor, are only intended to reflect conditions at the precise locations of the borings and do not necessarily reflect site conditions at other nearby locations. The Owner does not provide any warrants as to the accuracy of the boring logs. Reports, surveys and analyses provided by the Owner are for the Contractor's information only, and their accuracy and completeness are not guaranteed or warranted by the Owner or the A/E, and such reports are not adopted by reference into, nor are they part of the Contract Documents.

3.2.1.1 Notwithstanding any factual statement, conclusion, or any language or recommendations contained in such reports, the Contractor assumes full responsibility for inspection of the site and for the means and methods of construction that he employs when performing the Work. The Owner shall not be liable for any additional Work or costs arising as a result of any conclusions reached or assumptions derived by the Contractor from or based upon any such geotechnical, soils and other reports, surveys and analyses which the Owner makes available for the Contractor's information and review.

3.3 OWNER-PAID PERMITS AND FEES

3.3.1 The Owner will not secure nor pay for any permits. Contractor will be required to apply for and obtain all necessary VDOT and Town of Vienna permits prior to the start of any site work.

3.3.2. The Contractor's attention is directed to Article 4 describing other permits to be obtained and fees to be paid by the Contractor.

3.3.3 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein including, but not limited to, Articles 6 and 9.

3.4 OWNER'S RIGHT TO STOP WORK

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

3.5 OWNER'S RIGHT TO CARRY OUT THE WORK

3.5.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may make good such deficiencies using any method of his choosing. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor, under the original Contract Documents, the cost of correcting such deficiencies, including compensation for the A/E's additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

3.5.2 Neither the Owner nor the A/E nor their officers, agents, assigns or employees are in any way liable or accountable to the Contractor or his surety for the method by which Work performed by the Owner, or at the Owner's direction, or any portion thereof, is accomplished or for price paid therefore. Notwithstanding the Owner's right to carry out a portion of the Work, maintenance and protection of the Work remains the Contractor's and Surety's responsibility as provided for in the Performance Bond and Guarantee of Contractor, pursuant, but not limited, to Articles 4 and 12.

3.6 SUSPENSION OF WORK

3.6.1 The Owner shall have the authority to suspend the Work, in whole or in part, for such periods and reasons as the Owner may deem necessary or desirable, in its sole discretion, including without limitation:

1. Unsuitable weather;
2. Other conditions considered by the Owner to be unfavorable or unsafe for the suitable prosecution of the Work;
3. Other conditions considered by the Owner to be adverse toward his best interests.

3.6.2 Any such suspension shall be in writing to the Contractor. The Contractor shall obey immediately such orders of the Owner and shall not resume the Work until so ordered in writing by the Owner. No such suspension of the Work shall be the basis of a claim by the Contractor for any increase in the Contract Sum or for any other damages, losses, costs or expenses whatsoever. Whenever the suspension is for a reasonable time under the circumstances then existing and the cause thereof is beyond the control and is

without the fault or negligence of the Contractor, the Contractor shall be entitled to an extension of the Contract Time subject to the provisions of Article 8 herein.

3.6.3 In the event of suspension of Work, the Contractor will cause his employees including subcontractors to protect carefully his and their materials and Work against damage or injury from the natural and man made origin such as weather, corrosion, other environmental conditions, theft and vandalism. Such protection shall maintain completed and uncompleted portions of the Work as required by the Contract Documents. If, in the opinion of the, A/E, any Work or material shall have been damaged or injured by reason of failure on the part of the Contractor or any of his subcontractors to so protect same, such Work and materials shall be removed from the work site and replaced at the expense of the Contractor.

3.7 USE AND OCCUPANCY PRIOR TO FINAL ACCEPTANCE BY OWNER

3.7.1 The Owner has the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or any portions thereof may, or may not, have expired. The taking of possession and use by the Owner shall be in accordance with the provisions regarding Substantial Completion in Article 9. If such prior use delays the Work, the Contractor may submit a request for a time extension in accordance with the requirements of Article 8. By submitting a request for time extension, the Contractor thereby waives any claims for additional costs, expenses or damages associated with the Owner's prior use and occupancy.

3.8 RIGHT TO AUDIT AND PRESERVATION OF RECORDS

3.8.1 The Contractor shall maintain accurate books, records and accounts of all costs in accordance with generally accepted accounting principles and practices. The Owner or its authorized representative shall have the right to audit the books, records and accounts of the Contractor under any of the following conditions:

1. If the Contract is terminated for any reason in accordance with the provisions of these Contract Documents in order to arrive at equitable termination costs.
2. Disagreement(s) between the Contractor and the Owner occurs regarding the amount due the Contractor under the terms of this Contract.
3. To check or substantiate any amounts invoiced or paid which are required to reflect the costs of the Contractor, or the Contractor's efficiency or effectiveness under this Contract or in connection with extras, changes, claims, additions, back charges, or other, as may be provided for in this Contract.
4. If it becomes necessary to determine the Owner's rights and the Contractor's obligations under the Contract or to ascertain facts relative to any claim against the Contractor which may result in a charge against the Owner.

3.8.2 These provisions for an audit shall give the Owner unlimited access during normal working hours to the Contractor's books, records and accounts under the conditions stated above.

3.8.3 Unless otherwise provided by applicable statute, the Contractor, from the effective date of final payment or termination hereunder, shall preserve and make available to the Owner for a period of three (3) years thereafter, at all reasonable times at the office of the Contractor and without direct charge to the Owner, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work hereunder. Records shall include without limitation photographs, micro-photographs, design and as-built drawings or other authentic reproductions thereof.

3.8.4 The Owner will make all payments required of it under this Contract subject to audit, under circumstances stated above. Audit may be performed at the Owner's option, either during the Contract time period or during the above record retention time period. Regardless of authorization, approval or acceptance, signatures or letters which are given by the Owner and are part of the Owner's control systems or are requested by the Contractor, the payments made under this Contract shall not constitute a waiver of the Owner's right to audit, nor shall payments constitute a waiver or agreement by the Owner that it accepts as correct the billings, invoices or other charges on which the payments are based. If the Owner's audit produces a claim against the Contractor, the Owner may pursue all available legal remedies even though it has made all or part of the payments required by this Contract.

3.8.5 If any audit by the Owner or the Owner's representative discloses an underpayment by the Owner, the Owner shall have the duty to pay any amounts found by the audit to be owed to the Contractor. If such audit discloses an overpayment, the Contractor shall have the obligation to reimburse the Owner for the amount of the overpayment. The Owner's right to reimbursement from the Contractor of the overpayment and the duty of the Owner and the Contractor to make reimbursements or payments as described in this Article shall not be terminated or waived until the Owner has completed its audit.

3.8.6 The Owner's right to audit and the preservation of records shall terminate at the end of three (3) years as stated hereinabove. The Contractor shall include this "Right to Audit and Preservation of Records" clause in all subcontracts issued by him and he shall require same to be inserted by all lower tier Subcontractors in their subcontracts, for any portion of the Work. Should Contractor fail to include this clause in any such Contract or lower tier Contract, or otherwise fail to insure the Owner's rights hereunder, Contractor shall be liable to Owner for all costs, expenses and attorney's fees which Owner may have to incur in order to obtain an audit or inspection of or the restoration of records which would have otherwise been available to Owner from said persons under this clause. Such audit may be conducted by the Owner or its authorized representative.

3.9 RIGHT TO REVIEW DOCUMENTS AND OTHER MATERIALS

3.9.1 In addition to the rights granted to the Owner under Article 3.8, the Owner shall have the right to review and copy any and all of the Contractor's records pertaining to or relating in any way to this project. Contractor's records include, but are not limited to, correspondence, memoranda, minutes, reports, intra-office and inter-office communications, work papers, estimating sheets, progress reports, forecasts, audio or video recordings, computer disks and drives, all digital and analog storage devices, films, or any other materials, regardless of physical form or characteristics, which were prepared or obtained in the course of the Work by the Contractor. The Contractor shall make all such documents and records available to the Owner upon ten (10) days written notice to the Contractor of the Owner's intent to review such documents. The Contractor shall include this "Right to Review Documents and Other Materials" clause in all subcontracts issued by him and he shall require same to be inserted by all lower-tier subcontractors in their subcontracts for any portion of the Work. The Contractor hereby waives any right he may have to additional compensation or time extensions in the event he fails or refuses to produce records pertaining to any such claim as requested by the Owner pursuant to this paragraph. In addition, the Owner may withhold all or any portion of any progress payments which may be otherwise due the event Contractor refuses to comply with is obligations under this paragraph. The review of documents and other records under this clause may be conducted by the Owner or its authorized representatives.

ARTICLE 4

CONTRACTOR

4.1 DEFINITIONS

4.1.1 The Contractor is the person or entity identified in the Owner-Contractor Agreement and is referred to throughout the Contract Documents as if singular in number and masculine in gender. The term Contractor means the Contractor or his authorized representative.

4.1.2 This entire Contract is not one of agency by the Contractor for Owner but one in which the Contractor is engaged independently in the business of providing the services and performing the Work herein described as an independent Contractor.

4.2 REVIEW OF CONTRACT DOCUMENTS

4.2.1 The Contractor and his Subcontractors shall keep at the site of the Work at least one (1) copy of the drawings and specifications in new condition and shall at all times give the A/E, inspectors, as well as representatives of the Owner access thereto. Further, said drawings shall be the approved sets issued to the Contractor by the appropriate permit agencies. The Contractor shall perform no portion of the Work at any time without the Contract Documents and, when required, approved Shop Drawings, Product Data, Samples or Manuals for such portion of the Work at the site.

4.3 CONTRACTOR'S REPRESENTATIONS

4.3.1 By entering into this Contract with the Owner, the Contractor represents and warrants the following, together with all other representations and warranties in the Contract Documents:

1. That he is experienced in and competent to perform the type of Work required and to provide the plant, materials, supplies or equipment to be so performed or provided by him.
2. That he is financially solvent, able to pay his debts as they mature, and possessed of sufficient Working capital to initiate and complete the Work required under the Contract
3. That he is familiar with all Federal, State, County, Town, municipal and department laws, ordinances, permits, regulations and resolutions which may in any way affect the Work or those employed therein, including but not limited to any special acts relating to the Work or any part thereof.
4. That such temporary and permanent Work required by the Contract Documents which is to be done by him will be satisfactorily constructed and fit for use for its intended purpose and that such construction will not injure any person, or damage any property.
5. That he has carefully examined the Contract Documents and the site of the Work and that from his own investigations, he has satisfied himself and made himself familiar with: (1) the nature and location of the Work, (2) the character, quality and quantity of materials likely to be encountered, including, but not limited to, all structures and obstructions on or at the project site, both natural and man-made; (3) the character of equipment and other facilities needed for the performance of

the Work, (4) the general and local conditions including without limitation its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (5) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents; and (6) all other matters or things which could in any manner affect the performance and time scale of the Work.

6. That he will fully comply with all requirements of the Contract Documents.

7. That he will perform the Work consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the Owner;

8. That he will furnish efficient business administration and experienced superintendent(s) and an adequate supply of workmen, equipment, tools and materials at all times.

9. That he will complete the Work within the Contract Time and meet Contract Milestones.

10. That his Contract price is based upon the materials, systems and equipment required by the Contract Documents, without exception; and

11. That he has satisfied himself as to the feasibility and correctness of the Contract Documents for the construction of the Work.

4.4 SUPERVISION AND CONSTRUCTION PROCEDURES

4.4.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract; subject, however, to the Owner's right to reject means and methods proposed by the Contractor which are unsafe or otherwise not in compliance with the Contract Documents.

4.4.2 The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and Sub-subcontractor's, suppliers, their agents and employees, and of other persons performing any of the Work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were directly employed by the Contractor.

4.4.3 The Contractor understands and agrees that he shall not be relieved of his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner or the A/E in their administration of the Contract or by inspections, tests, or approvals required or performed under Article 7 by persons other than the Contractor.

4.4.4 Before starting a section of Work, the Contractor shall carefully examine all preparatory Work that has been executed to receive his Work to see that it has been completed. He shall check carefully, by whatever means are required, to ensure that his Work and adjacent related Work will finish to proper quality, contours, planes, and levels.

4.4.5 The Contractor understands and agrees that the Owner and A/E will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and they will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner and the A/E will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees, or any other persons performing any of the Work.

4.4.6 The Contractor shall employ no plant, equipment, materials, methods or persons to which the Owner objects.

4.4.7 The Contractor shall not remove any portion of the Work or stored materials from the site of the Work except in the case of rejected work or when directed by the A/E.

4.5 LABOR. MATERIALS AND EQUIPMENT

4.5.1 The Contractor will provide all plant property, labor, materials, supplies, equipment and other facilities and things necessary or proper for or incidental to the Work contemplated by this Contract, as required by and in strict accordance with the applicable Contract Documents and required by and in strict accordance with such changes as are ordered and approved pursuant to the Contract and will perform all other obligations imposed on him by this Contract. Final payment will not be made until the Work is so completed.

4.5.2 Unless otherwise stated in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, mobilization, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

4.5.3 Work and materials which are necessary in the construction but which are not specifically referred to in the specifications or shown in the drawings but implied by the Contract shall be furnished by the Contractor at his own cost and expense. Such Work and materials shall correspond with the general character of the Work as may be determined by the A/E subject to review as provided in Article 2.2.11.

4.5.4 The Contractor shall perform at least that percentage of the Work specified in Article 7 of the Owner-Contractor Agreement, with forces that are in the direct employment of the Contractor's organization. The Contractor shall submit to the Owner within thirty (30) calendar days after award of the Contract for the Work, a designation of the Work to be performed by the Contractor with his own forces. The percentage of the Work to be performed under subcontract shall be calculated by adding the amounts of all subcontracts and dividing this sum by the total amount of the Contract. No portion of the Contract shall be subcontracted or otherwise performed by a party not the Contractor, except with the written consent of the Owner.

4.5.5 The Contractor shall at all times enforce strict discipline, safety and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

4.5.5.1 If any person employed on the Work by the Contractor shall appear to the Owner to be incompetent or to act in a disorderly, unsafe or improper manner, such person shall be removed immediately at the request of the Owner, and shall not be reemployed except on written consent of the Owner.

4.5.6 No materials or supplies for the Work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage, or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies used by him in the Work.

4.5.7 The Contractor shall provide approved sanitary accommodations. All wastes shall be covered, disinfected, incinerated or otherwise disposed of legally.

4.5.8 All equipment, apparatus and/or devices of any kind to be incorporated into the Work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the Work shall be entirely satisfactory to the Owner as regards operations, capacity and/or performance. No approval, either written or verbal, of any drawings, descriptive data or samples of such equipment, apparatus, and/or device shall relieve the Contractor of his responsibility to turn over the same in good Working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be

removed from the site and replaced by proper and acceptable equipment, etc., or put in good Working order satisfactory to the Owner without additional cost to the Owner.

4.6 WARRANTY

4.6.1 The Contractor warrants to the Owner and the A/E that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Workmanship will be of first class quality, free from faults and defects and in conformance with the Contract Documents and all other warranties and guaranties specified therein including those of the manufacturer. Where no standard is specified for such Workmanship or materials, they shall be the best of their respective kinds. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 12.

4.6.2 The Work included in this Contract is heretofore specified. The Contractor will be required to complete the Work specified and to provide all items needed for construction of the project, complete and in good order.

4.7 CONTRACTOR-PAID TAXES, PERMITS, FEES AND NOTICES

4.7.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time bids are received, whether or not yet effective. Taxes to be paid by the Construction Contractor shall include, but shall not be limited to, the Town of Vienna Business, Professional and Occupational License Tax (a gross receipts tax).

4.7.2 Except as provided in Article 3, the Contractor will be responsible for obtaining and paying for all other fees, permits and licenses necessary for the proper execution of the Work, including but not limited to:

1. Plumbing, Electrical, Mechanical Permits and inspections;
2. Temporary water meter, temporary electrical and telephone line installations and temporary utility usage;
3. Temporary security lighting and fencing;
4. All other permits necessary in order to perform the Work shall be secured by the Contractor and fees necessary in order to perform the Work shall be paid by him as part of this Contract at no additional cost to the Owner.

4.7.3 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations, permits, resolutions and lawful orders of any public authority bearing on the performance of the Work; including but not limited to OSHA, Title 40.1 Chapter 3 of the Code of Virginia, and Title VII of the Civil Rights Act of 1964, as amended. All safety violations shall be corrected immediately upon receipt of notice of violation.

4.8 COMPLIANCE

4.8.1 All demolition and excavation shall comply with the rules and regulations for the prevention of accidents as issued by the Department of Labor and Industry of the Commonwealth of Virginia and the Town of Vienna.

4.8.2 To the extent of the Work indicated in the Contract Documents, the Contractor shall comply and the construction shall conform to all applicable and current editions or revisions of the following codes, specifications and standards.

1. Contract Documents;
2. The Virginia Uniform Statewide Building Code, as amended (BOCA and NEC);
3. The Virginia Department of Transportation Road and Bridge Specifications; Road and Bridge Standards; Roadway Design Manual; Informational and Instructional Memoranda; Virginia Work Area Protection Manual; and other applicable documents (current editions)..
4. Town of Vienna standards and regulations

4.8.3 If the Contractor (or any person in contract with the Contractor relating to the subject project) knew, or should have known, using a normal, professional standard of care, that an error, inconsistency, omission, ambiguity, discrepancy, conflict or variance exists in the Contract Documents, or between the Contract Documents and any of the codes, specifications and standards set forth in 4.8.2 herein, the Contractor has the obligation to seek a clarification thereof from the Owner prior to the time the Work is performed which is affected by such error, inconsistency, omission, ambiguity, discrepancy, conflict or variance. The Contractor shall not be liable for damages relating thereto, if he has met this obligation. The Owner will welcome such a clarification request and, if deemed necessary by the Owner, the Owner will issue a written instruction clarifying the matter in question. Should the Contractor fail to seek such a clarification thereof immediately upon the discovery of the need therefore, prior to the time the said Work is performed, the Contractor thereby assumes all risk of loss related to such error, inconsistency, ambiguity, discrepancy, conflict or variance which the Contractor (and any person in contract with Contractor relating to the subject project) knew or should have known existed prior to the time the Work was performed.

4.8.4 Any material or operation specified by reference to publications, published specifications of a Manufacturer, a Society, an Association, a Code, or other published Standard, shall comply with the requirements of the referenced document which is current on the date of receipt of bids. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the A/E in writing, with a copy to the Owner. The A/E will make such judgments as are necessary and notify the Contractor prior to the performance of the Work.

4.8.5 If the Contractor performs any Work to be contrary to such laws, ordinances, permits, rules, regulations and resolutions, he shall assume full responsibility therefore and shall bear all costs attributable thereto.

4.8.5.1 The Contractor/Consultant shall comply with all laws and regulations of the Commonwealth of Virginia and the United States with respect to the employment of unauthorized aliens. Contractor/Consultant shall not hire or subcontract any portion of the work under this Contract to any individual the Contractor knows or reasonably should know to be an unauthorized alien as defined by 8 U.S.C. §1324a(h)(3). A violation of this provision shall constitute a material breach of the Contract and the Town may, in its sole discretion, terminate the contract. In the event the Contract is terminated for a cause by the Contractor or its Subcontractor's hiring of unauthorized aliens, Contractor hereby waives any claim to lost profits and the Town may proceed in accordance with the termination and default provision of section 4.11.12.

4.8.6 The Contractor will be held responsible for locating all underground structures such as water, oil and gas mains, water and gas services, storm and sanitary sewers and telephone and electric conduits which may be encountered during the construction operation. He shall dig test holes to determine the position of the underground structures. The Contractor shall pay the cost of digging test holes and likewise he shall pay the cost of the services of the representatives of the owners of such utilities for locating the said utilities. The cost of determining the location of any and all utilities is to be included in the bid price. The Owner shall pay the owners of such utilities for fees or charges for relocation of gas, electric, telephone, cable or other lines and/or services indicated to be relocated by others.

4.8.7 The Contractor shall have Miss Utility locate all utilities on the site which are within the area of the Work. If utilities are marked which are not shown on the plans, the Contractor shall immediately notify the Owner and the A/E of such findings. The Owner and A/E shall provide direction to the Contractor within a reasonable period of time if additional Work is required as a result of the utility findings. Any costs or expenses associated with locating such utilities may be the basis of a Change Order as provided in Article 11.

4.9 ALLOWANCES

4.9.1 The Special Conditions will contain provisions for allowances; if such is applicable to this Contract.

4.10 SUPERINTENDENT

4.10.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall have full authority to represent the Contractor and all communications provided or furnished to the Superintendent shall be as binding as if given to the Contractor.

4.10.2 It is understood that such Superintendent shall be acceptable to the Owner and shall be one who will be continued in that capacity for duration of this project, unless he ceases to be on the Contractor's payroll. The Superintendent shall not be employed on any other project during the performance of this Contract.

4.11 CONSTRUCTION SCHEDULE

4.11.1 The Contractor shall complete all work within 120 days.

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

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

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

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

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

4.11.7 The Contractor's Superintendent shall maintain at the job site, an up to date, approved Construction Schedule, indicating actual monthly progress for those portions of the project on which Work has been or is being performed.

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

4.11.9 If, in the opinion of the Owner, the Construction Schedule does not accurately reflect the actual progress and sequence of the Contractor's performance of the Work, the Contractor shall revise the Construction Schedule, upon the Owner's written request. The Contractor shall submit, within seven (7) days following a request for schedule revision, a revised Construction Schedule that accurately represents the progress and sequence of the Contractor's performance of the Work.

4.11.10 Owner shall have the right to approve or reject any scheduling consultant that may be selected or retained by Contractor.

4.11.11 Contractor covenants and guarantees that Contractor <u>will not</u>:

1. Misrepresent to Owner its' planning and scheduling of the Work;
2. Utilize schedules materially different from those made available to the Owner or any Subcontractors for the direction, execution and coordination of the Work, or which are not feasible or realistic;
3. Prepare schedules, updates, revisions or reports which do not accurately reflect Contractor's actual intent or Contractor's reasonable and actual expectations as to:
   - (a) The sequences of activities,
   - (b) The duration of activities,
   - (c) The responsibility for activities,
   - (d) Resource availability,
   - (e) Labor availability or efficiency,
   - (f) Expected weather conditions,
   - (g) The value associated with the activity,
   - (h) The percentage complete of any activity,
   - (i) Completion of any item of Work or activity,

(j) Project completion,

(k) Delays, slippages, or problems encountered or expected,

(l) Subcontractor requests for time extension, or delay claims of subcontractors,

(m) Float time available.

4. Hire or subcontract any portion of the work under this Contract to any individual the Contractor knows or reasonably should know to be an unauthorized alien as defined by 8 U.S.C. §1324a(h)(3).

4.11.12 Contractor's failure to substantially comply with the foregoing covenant and guarantee of Paragraph 4.11.11 shall be a substantial and material breach of contract which will permit Owner to terminate Contractor for default, or withhold payments under the Contract Documents, and shall entitle Owner to the damages afforded for misrepresentation or fraud by these Contract Documents or applicable law.

4.11.13 Should Contractor fail to substantially comply with the provisions of the Contract Documents relating to scheduling and execution of the Work by the overall project schedule, Owner shall have the right, at its option, to retain the services of scheduling consultants or experts, including attorneys whenever necessary in the opinion of the Owner, to prepare schedules, reports, updates and revisions of the schedule in accordance with the Contract Documents and to review and analyze same in order to allow Owner and A/E to evaluate the program of the Work by Contractor, to determine whether Contractor is substantially complying with the Contract Documents and to direct such action of the part of the Contractor, as required to ensure, under the Owner's schedule prepared hereunder, that Contractor will complete the Work within the Contract Time. All costs and expenses and fees incurred by Owner in preparing the schedule hereunder shall be charged to Contractor's account. If Contractor fails to substantially comply with the scheduling and execution of the Work requirements of the Contract Documents, Contractor hereby agrees, in such instance, to comply with such Owner-prepared schedules, directions and activity sequences and durations as Owner may reasonably require without additional cost to the Owner. Cost adjustments may be allowed for such changes that add additional tasks to the Work as the Owner may direct, to ensure completion within the Contract Time.

4.11.14 The Construction Schedule shall be utilized by Owner, A/E and Contractor for submission, review and approval of monthly Payment Requests. The schedule must be updated by Contractor monthly with each progress payment application and submitted to the Owner and A/E for review with the progress payment application. Owner shall not be required to process and review Contractor's Application for Payment if Contractor has failed or refused to provide the scheduling update information required herein.

4.11.15 The type of schedule to be utilized on this project, along with its particular elements, shall be as specified in Section F, Supplemental/Special Conditions.

4.12 RESPONSIBILITY FOR COMPLETION

4.12.1 The Contractor shall furnish such manpower, materials, facilities and equipment and shall Work such hours, including night shifts, overtime operations, Sundays and holidays, as may be necessary to ensure the performance of the Work within the Milestone and Completion dates specified in the Owner-Contractor Agreement. If it becomes apparent to the Owner that the Work will not be Completed within required Milestone or Completion dates, the Contractor agrees that it will assume full responsibility to take some or all of the following actions, at no additional cost to the Owner, in order to ensure, in the opinion of the Owner, that the Contractor will comply with all Milestone and Completion date requirements:

1. Increase manpower, materials, crafts, equipment and facilities;
2. Increase the number of Working hours per shift, shifts per Working day, Working days per week, or any combination of the foregoing;
3. Reschedule activities to achieve maximum practical concurrency of accomplishment of activities.

4.12.2 If the actions taken by the Contractor are not satisfactory, the Owner may direct the Contractor to take any and all actions necessary to ensure completion within the required Milestone and Completion dates, without additional cost to the Owner. In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

4.12.3 If, in the opinion of the Owner, the actions taken by the Contractor pursuant to this or the progress or sequence of Work are not accurately reflected on the Construction Schedule, the Contractor shall revise such schedule to accurately reflect the actual progress and sequence of Work.

4.12.4 Failure of the Contractor to substantially comply with the requirements of this Article may be considered grounds for a determination by the Owner, pursuant to Article 14, that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified.

4.12.5 The Owner may, at its sole discretion and for any reason, including when it is apparent to the A/E or Owner that the Work will be completed within the required Milestone or Completion dates, require the Contractor to accelerate the Schedule of Performance by providing overtime, Saturday, Sunday and/or holiday Work and/or by having all or any Subcontractors designated by the Owner provide overtime, Saturday, Sunday, and/or holiday Work. In the event that the Owner requires overtime, Saturday, Sunday or holiday Work by the Contractor's or his Subcontractors own forces, and such requirement is not related in any way to the Contractor's apparent inability to comply with Milestone and Completion date requirements, the Owner shall reimburse the Contractor for the direct costs to the Contractor of the premium time for all labor utilized by the Contractor in such overtime, Saturday, Sunday or holiday Work (but not for the straight time costs of such labor), together with any Social Security and State or Federal unemployment insurance taxes in connection with such premium time. However, no overhead supervision costs, commissions, profit or other costs and expenses shall be payable in connection therewith.

4.12.6 This provision does not eliminate the Contractor's responsibility to comply with the Town noise ordinances, all VDOT permit requirements and all other applicable state and local laws, regulations, rules, ordinances, resolutions, and permit requirements.

4.13 DOCUMENTS AND SAMPLES AT THE SITE

4.13.1 The Contractor shall, at the Owner's direction, maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data, Samples and Manuals. These items shall be available to the A/E. These items shall be delivered to the Owner upon completion of the Work.

4.13.2 The Owner shall provide one complete set of sealed contract drawings, from the latest revision, designated for as-built revision, at the beginning of the Contract to the Contractor. This set of drawings is to be returned to the A/E prior to final payment with all as-built information drawn to scale onto the sealed drawings. During the course of the construction, these drawings may be used by the Contractor for general reproduction purposes.

4.14 SHOP DRAWINGS, PRODUCT DATA, SAMPLES AND MANUALS

4.14.1 SHOP DRAWINGS are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

4.14.2 PRODUCT DATA are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

4.14.3 SAMPLES are physical examples which illustrate materials, equipment or Workmanship and establish standards by which the Work will be judged.

4.14.4 MANUALS are manufacturer's installation, start-up, operating, maintenance and repair instructions, together with parts lists, pictures, sketches and diagrams which set forth the manufacturer's requirements, for the benefit of the Contractor and the Owner.

4.14.5 The Contractor shall review, approve and submit, with reasonable promptness and in such sequence as to cause no delay in the Work or in the Work of the Owner or any separate contractor, all Shop Drawings, Product Data, Samples and Manuals required by the Contract Documents.

4.14.5.1 Unless otherwise directed in writing, the Contractor shall submit not less than eight (8) copies of each Shop Drawing or Product Data to the A/E and one (1) copy to the Owner. The Owner will return four (4) copies of each approved submittal directly to the Contractor.

4.14.5.2 Where the Contract calls for the submittal of manufacturer's data to the A/E for information only, such submittals shall be made before the commencement of any portion of the Work requiring such submission.

4.14.6 By approving and submitting Shop Drawings, Product Data, Samples and Manuals, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

4.14.6.1 Parts and details not fully indicated on the contract drawings shall be detailed by the Contractor in accordance with standard engineering practice. Dimensions on the contract drawings, as well as detailed drawings themselves are subject in every case to measurements of existing, adjacent, incorporated and completed Work, which shall be taken by the Contractor before undertaking any Work dependent on such data.

4.14.7 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner or A/E's approval of Shop Drawings, Product Data, Samples or Manuals under Article 2 unless the Contractor has specifically informed the Owner and A/E in writing of such deviation at the time of submission and the Owner has given written approval for the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples or Manuals by the A/E's approval thereof.

4.14.8 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other then those requested by the Owner or A/E on previous submittals.

4.14.8.1 No portion of the Work requiring submission of Shop Drawings, Product Data or Samples shall commence until the submittal has been approved by the Owner and A/E as provided in Article 2. All such portions of the Work shall be in accordance with approved submittals.

4.14.9 For substances that are proposed for use in the project that may be hazardous to human health, the Contractor shall submit to the A/E, for information only, information on precautions for safety using these substances, including certification of registration by the Contractor with authorities under the respective Virginia and Federal Toxic Substances Control Acts.

4.14.10 Unless otherwise modified by the Owner in writing, the Contractor shall label or stamp and number all Shop Drawings, Product Data, Samples or Manuals as hereinafter prescribed.

4.14.10.1 In order to indicate that the submittals have been Reviewed and Approved by the Contractor as to conformance to the Contract Documents, the Contractor shall have made and shall use labels and/or a rubber stamp which shall materially conform to the following sample:

Submittal No. _____

For Contract No. _____, Project No. _____

Contractor: _____

REVIEWED and APPROVED for Conformance with the Contract Documents

By: _____Date _____

(Signature)

References:

Drawing Sheet No's.: _____

Specification Section No's.: _____

4.14.10.2 The Contractor shall utilize a ten (10) character submittal identification numbering system in the following manner:

1. The first character shall be a D or S or M, which represents Shop/Working Drawing and other Product Data (D); Sample (S) or Operating/Maintenance Manual (M).
2. The next five (5) digits shall be the applicable Specification Section Number.
3. The next three (3) digits shall be the numbers 001-999 to sequentially number each separate item or drawing submitted under each specific Section number.
4. The last character shall be a letter, A-Z, indicating the submission or resubmission of the same drawing, i.e., A=lst submission, B=2nd submission, C=3rd submission, etc. A typical submittal number would be as follows:

   D-03300-008-B

   D = Shop Drawing

   03300 = Specification Section for Concrete

   008 = The eighth different submittal under this specification.

   B = The second submission (1st resubmission) of that particular drawing.

4.14.11 The Contractor shall submit a copy of each submittal transmittal sheet (for shop drawings, product data, samples or manuals) to the Owner simultaneously with the Contractor's submission of said drawings, data, samples or manual packages to the A/E.

4.15 EQUAL PRODUCTS

4.15.1 The term "Product" as used herein refers to materials, equipment, supplies, articles, fixtures, devices, types of constructions, fabrications, software, instruction manuals, methods of constructions or other items either produced, manufactured or purchased, related to the Work, as appropriate.

4.15.2 All products provided shall, whenever specified and otherwise wherever practicable, be the standard products of recognized, reputable manufacturers. Unless otherwise provided in the Contract Documents, the naming of a certain product brand, make, manufacturer or article, device, product, material, fixture or type of construction shall convey the general style, type, character and standard of quality of the article desired and shall not be construed as limiting competition. The Contractor may request approval of the Owner to use another brand, make, manufacturer, article, device, product, material, fixture, form or type of construction which the Contractor judges to be equal to that specified. An item shall not be considered by the Owner for approval as equal to the item so named or described unless it (1) it is at least equal in quality, durability, appearance, strength, and design; (2) it will perform at least equally the specific function imposed by the general design for the Work being contracted for or the material being purchased; and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications. Approval shall be at the sole discretion of the Owner and will be based upon considerations of quality, Workmanship, economy of operation, suitability for the purpose intended, and acceptability for use on the project. Any such approval must be in writing to be effective and the decision of the Owner shall be final.

4.15.3 If the Contractor elects to use an equal product previously approved by an Addendum during bidding, and the Contractor (as a Bidder) did not provide the "Contractor Request for Equal Product and Contractor's Representations" form prior to the opening of bids, he shall comply with the requirements of paragraph 4.15.5. However, it is not necessary to submit the data required in 4.15.4.

4.15.4 To obtain such approval of equal products other than those specified in Contract Documents, and not previously approved during the bidding, the Contractor's request for approval of any equal product shall include the following:

1. Complete data substantiating compliance of the proposed equal product with the Contract Documents;
2. Accurate cost data on proposed equal product in comparison with product or method specified;
3. Product identification including manufacturer's name, address, internet site and phone number;
4. Manufacturer's literature showing complete product description, performance and test data, and all reference standards;
5. Samples and colors in the case of articles or products;
6. Names and address of similar projects on which the product was used and date of installation;
7. For construction methods, include a detailed description for the proposed method and drawings illustrating same;
8. All directions, specifications, and recommendations by manufacturers for installation, handling, storing, adjustment, and operation.

4.15.5 The Contractor shall also submit with his request for approval a sworn and notarized statement which shall include all of the following representations by the Contractor, namely that:

1. He has investigated the proposed equal product and determined that it is equal or better in all respects to that specified and that it fully complies with all requirements of the Contract Documents;
2. He will meet all contract obligations with regard to this substitution;
3. He will coordinate installation of accepted equal products into the Work, making all such changes and any required schedule adjustments, at no additional cost to the Owner, as may be required for the Work to be complete in all respects;
4. He waives all claims for additional costs and additional time related to equal products. He also agrees to hold the Owner harmless from claims for extra costs and time incurred by Subcontractors

and suppliers, or additional services which may have to be performed by the A/E, for changes or extra Work that may, at some later date, be determined to be necessary in order for the Work to function in the manner intended in the Contract Documents;

5. He will provide the same warranty and guarantee, and perform any Work required in accordance therewith, for the equal product that is applicable to the specified item for which the equal product is requested;

6. Material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturers' recommendation and as specified in the Contract Documents;

7. In all cases new materials will be used unless this provision is waived by notice from the Owner or unless otherwise specified in the Contract Documents;

8. All material and Workmanship will be in every respect, in accordance with that which in the opinion of the Owner, is in conformity with approved modern practice;

9. He has provided accurate cost data on the proposed equal product in comparison with the product or method specified, if applicable.

4.15.6 The Owner may require tests of all products proposed as equal products so submitted to establish quality standards, at the Contractor's expense. After approval of an equal product, if it is determined that the Contractor submitted defective information or data regarding the equal product upon which Owner's approval was based, and that unexpected or uncontemplated redesign or rework of the project will be required in order to accommodate the equal product, or that the item will not perform or function as well as the specified item for which equal product was requested, the Contractor will be required to furnish the original specified item or request approval to use another equal product. The Contractor shall pay all costs, expenses or damages associated with or related to the unacceptability of such an equal product and the resultant utilization of another item and no time extension shall be granted for any delays associated with or related to such an equal product.

4.15.7 If an equal product is approved, no change in brand or make will be permitted unless satisfactory, written evidence is presented to and approved by the Owner that the manufacturer cannot make scheduled delivery of the approved item. Equal products will not be considered for approval by the Owner if any of the following conditions exist:

1. The proposed equal product is indicated or implied on the Contractor's shop drawing or product data submittals and has not been formally submitted for approval by the Contractor in accordance with the above-stated requirements;

2. Acceptance of the proposed equal product will require substantial design revisions to the Contract Documents or is otherwise not acceptable to the Owner.

4.15.8 Except as otherwise provided for by the provisions of any applicable laws, the Contractor shall not have any right of appeal from the decision of the Owner disapproving any products submitted if the Contractor fails to obtain the approval for an equal product under this Article.

4.15.9 If the Contractor proposes a product which the Owner determines is not equal to the product named in Contract Documents but which the Owner nevertheless is willing to accept, Contractor shall provide upon request by the Owner an itemized comparison of the proposed substitution with the product specified and the cost differential which shall be credited to the Owner in a Change Order issued in accordance with Article 11.

4.16 USE OF SITE

4.16.1 The Contractor shall confine his operations at the site to areas permitted by law, ordinances, permits, easements, right-of-way agreements and the Contract Documents. The Contractor shall not unreasonably encumber the site, in the opinion of the Owner, with any materials, equipment or trailers nor shall he block the entrances or otherwise prevent reasonable access to the site, other Working and parking areas, completed portions of the Work and/or properties, storage areas, areas of other facilities that are adjacent to the Worksite. If the Contractor fails or refuses to move said material, equipment or trailers within 24 hours of notification by the Owner to so do, the Owner shall have the right, without further notice, to remove, at the Contractor's expense, any material, equipment and/or trailers which the Owner deems are in violation of this paragraph.

4.17 CUTTING AND PATCHING OF WORK

4.17.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work and to make its several parts fit properly and in accordance with the Contract Documents.

4.17.2 The Contractor shall not damage or endanger any portion of the Work or the Work of the Owner or any separate contractors by cutting, patching or otherwise altering any Work, or by excavation. The Contractor shall not cut or otherwise alter the Work of the Owner or any separate contractor except with the written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or any separate contractor his consent to cutting or otherwise altering the Work. The Owner shall not be required to accept Work with a cut, splice, or patch when such cut, patch or splice is not generally accepted practice for the particular Work involved or is otherwise unworkmanlike in the opinion of the Owner.

4.18 RIGHT TO PUBLISH

4.18.1 The Contractor agrees that he will not publish, cause to be published, or otherwise disseminate any information of whatever nature relating to the Work being performed under this Contract, except as may be approved by the Owner in writing.

4.19 SITE CLEAN UP

4.19.1 The Contractor at all times shall keep the Project site free from accumulation of waste materials or rubbish caused by his operations. Before final payment is made, the Contractor shall remove all of his waste materials, rubbish, scrap materials, debris, tools, construction equipment, machinery, surplus materials, false Work, temporary structures, including foundations thereof and plant of any description, from the Project site and put the site in a neat, orderly condition.

4.19.2 If the Contractor fails to clean up, as required herein, at anytime during the performance of the Work or at the completion of the Work, the Owner may do so as provided herein and the cost thereof shall be charged to the Contractor.

4.20 PATENTS, ROYALTIES, ETC

4.20.1 The Contractor guarantees to save harmless the Owner, its officers, agents, servants and employees from liability of any kind or nature, including cost, expense and attorney's fees on account of suits and claims of any kind for violation or infringement of any letters patent or patent rights by the Contractor, or by anyone directly or indirectly employed by him, or by reason of the use of any art, process, method, machine, manufacture, or composition of matter patented or unpatented in the performance of this Contract in violation or infringement of any letter or rights. The Contractor agrees to pay all royalties, fees, licenses, etc. required in respect of the Work or any part thereof as part of his obligations hereunder without any additional compensation.

4.21 ANTI-DISCRIMINATION IN EMPLOYMENT

4.21.1 By submitting their bids/proposals all bidders/offerors certify to the Town of Vienna that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

In every contract over $10,000.00 the provisions in A and B below apply:

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

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin 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.

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.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

b) The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over $10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

4.22 CONTRACT SECURITY

4.22.1 The Successful Bidder shall deliver to the Owner five (5) copies of a Performance Bond and a separate Labor and Material Payment Bond in a form acceptable to the Owner and each in an amount required by the Contract Documents in Section A, Information to Bidders, Paragraph A-I0 as security for the faithful performance of the Contract, and the payment of all persons performing labor and furnishing materials in connection with this Contract. The amount of the Performance and Payment Bonds shall be increased to the same extent the Contract Sum is increased due to modifications. The form of bonds shall be acceptable to the Owner and the surety shall be such surety company or companies as are acceptable to

the Owner and as are authorized to transact business in the Commonwealth of Virginia. The cost of such bonds shall be included in the Contractor's proposal amount.

4.22.2 If the amount of all Work subcontracted to any one Subcontractor is in excess of $10,000, the Contractor may at his option require such Subcontractor to furnish a Labor and Material Payment Bond with surety thereon, in the amount of fifty percent (50%) of the amount of the Subcontract. If such bonds are provided, the Contractor shall ensure that the surety corporation providing the bond for the Subcontractor, is licensed to do business in Virginia.

4.22.3 The Contractor shall ensure that all sureties providing bonds for the Project will give written notice to the Owner, at least thirty (30) days prior to the expiration or termination of the bond(s).

4.22.4 If, at any time, any surety or sureties becomes insolvent or is determined by the Owner to be unable to adequately secure the interest of the Owner, the Contractor shall within (30) days after notice from the Owner to do so, substitute an acceptable bond(s) in such form and sum and signed by such other sureties as may be satisfactory to the Owner. The premiums on such bond(s) shall be paid by the Contractor.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform or supply any of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. The term Subcontractor does not include any separate contractor or his Subcontractors.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform or supply any of the Work at the site. The term Sub-subcontractor is referred to throughout the Contractor Documents as if singular in number and masculine in gender and means a Sub-subcontractor or an authorized representative thereof.

5.1.3 The A/E will not deal directly with any Subcontractor or Sub-subcontractor or materials supplier. Unless otherwise authorized, communication by the A/E will be made only through the Owner to the Contractor. Subcontractor, Sub-subcontractors or material suppliers shall route requests for information or clarification through the Contractor to the NE, with a copy to the Owner.

5.2 AWARD OF SUBCONTRACT AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Subcontractors shall be subject to the approval of the Owner. The Contractor shall submit to the Owner and A/E prior to the award of any subcontract for Work under this contract and thirty (30) calendar days after the award of this contract, the proprietary names and the suppliers of principal items or systems of materials and equipment proposed for the Work, the names and addresses, internet sites, business and emergency phone numbers of the Subcontractors which he proposes to employ under this contract, as well as such other information as may be requested by the Owner, including the Subcontractor(s) Notification Form. The Owner will approve or disapprove each Subcontractor and supplier based upon his apparent financial soundness and responsibility, his known or reported performance on previous similar Work, and his available plant, equipment and personnel to perform the Work. The Contractor shall not employ a Subcontractor or supplier which has been disapproved by the Owner and shall resubmit names of proposed Subcontractors or suppliers until approvals are granted by the Owner. Disapproval of a proposed Subcontractor or supplier shall not affect the contract price.

5.2.2 The Contractor shall make no substitution for any Subcontractor, person or entity previously selected without the specific written approval by the Owner of such substitution.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents assumes toward the Owner and the A/E. Said agreement shall preserve

and protect the rights of the Owner and the A/E under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Sub-subcontractor's. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract, copies of all of the Contract Documents, and identify to the Subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to his Sub-subcontractor's. Each subcontract agreement shall ensure that the Subcontractor is in compliance with all appropriate provisions of the Contract Documents.

5.3.2 The provisions herein regarding Subcontractor approvals shall in no way affect the liability of the Contractor to Owner regarding performance of all obligations by or payment of Subcontractors. Approval to subcontract and of any given Subcontractor shall not to any degree relieve the Contractor of his obligation to perform or have performed to the full satisfaction of the Owner all of the Work required by this Contract.

5.4 QUALIFICATION SUBMITTALS

5.4.1 Specific qualification submittals may be required of Subcontractors, installers and suppliers for certain critical items of the Work. Required qualification submittals are set forth in detail in the Technical Specifications and shall be collected and submitted by the Contractor to the A/E and the Owner. All information required of a single Subcontractor, installer or supplier shall be contained in a single, complete submittal. The Contractor shall submit the required qualification information within ten (10) days after receipt of the Owner's request.

5.4.2 The Owner may reject any proposed Subcontractor, installer or supplier, or any qualification submittals related thereto, for the following reasons:

1. The Contractor's failure to submit requested information within the specified time;
2. The Contractor's failure to provide all of the requested information;
3. The Contractor's submission of a Subcontractor, installer or supplier, or qualifications thereof, which are unacceptable in the judgment of the Owner.

5.4.3 Should the Owner have reasonable objection to any proposed Subcontractor, installer or supplier, the Contractor shall submit another firm for approval by the Owner at no additional cost to the owner.

ARTICLE 6

WORK BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform Work related to the Project with his own forces, and to award separate contracts in connection with other portions of the Project or other Work on the site under these or similar Conditions of the Contract.

6.1.2 When separate contracts are awarded for different portions of the Project or other Work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford other contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their Work and shall properly connect and coordinate the Work with such other Work. The Contractor shall coordinate his Work with the Owners and other contractors to 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 the Work or the Work of any other contractors.

6.2.1.1 If the execution or result of any part of the Work depends upon any Work of the Owner or of any separate contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Owner in writing any apparent discrepancies or defects in such Work of the Owner or of any separate contractor that render it unsuitable for the proper execution or result of any part of the Work.

6.2.1.2 Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner's or separate contractor's Work as fit and proper to receive the Work, except as to defects which may develop in the Owner's or separate contractor's Work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

6.2.2 Should the Contractor cause damage to the Work or property of the Owner or of any separate contractor on the Project, or to other Work on the Site, or delay or interfere with the Owner's Work on ongoing operations or facilities or adjacent facilities or said separate contractor's Work, the Contractor shall be liable for the same; and, in the case of another contractor, the Contractor shall attempt to settle said claim with such other contractor prior to such other contractor's institution of litigation or other proceedings against the Contractor.

6.2.2.1 If such separate contractor sues the Owner on account of any damage, delay or interference caused or alleged to have been so caused by the Contractor, the Owner shall notify the Contractor, who shall defend the Owner in such proceedings at the Contractor's expense. If any judgment or award is entered against the Owner, the Contractor shall satisfy the same and shall reimburse the Owner for all damages, expenses, attorneys' fees and other costs which the Owner incurs as a result thereof.

6.2.3 Should Contractor have a dispute with a separate contractor with whom the Owner has contracted regarding damage to the Work or the property of Contractor or to the Work or property of said separate

contractor or with regard to any delays or interferences which either Contractor or said separate contractor has caused to the performance of the other's Work, Contractor agrees to attempt to settle such dispute directly with said separate contractor. If such dispute cannot be settled, Contractor agrees to arbitrate such dispute directly with said separate contractor in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in force. Contractor agrees that the Owner shall not be a party to any such arbitration and that in no event shall the Contractor seek to recover from the Owner, and the Contractor hereby represents to the Owner, that it will not seek to recover from it any damages, costs, expenses (including, but not limited to, attorney's fees) or loses of profit incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused or allegedly caused by any separate contractor.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Article 4, the Owner may clean up and charge the cost thereof to the Contractor responsible therefore as the Owner shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 GOVERNING LAW

7.1.1 The provisions of this contract shall be interpreted in accordance with the laws of Virginia, in accordance with the laws, ordinances, regulations, permits, zoning and resolutions of the Town of Vienna, Virginia.

7.2 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

7.3 SUCCESSORS AND ASSIGNS

7.3.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to him hereunder, without the previous written consent of the Owner and the Contractor's Surety.

7.3.1.1 In the event the Contractor desires to make an assignment of all or part of the Contract or any monies due or to become due hereunder, the Contractor shall file a copy of consent of surety, together with a copy of the assignment to the Owner and A/E. In the event the Contractor assigns all or any part of the monies due or to become due under this Contract, the instrument of assignment shall state that the right of assignees in and to any monies due to or to become due to Contractor shall be subject to prior liens and claims of all persons, firms and corporations that provided labor services or furnished material and equipment during the performance of the Work. The rights of assignees shall further be subject to the payment of any liens, claims, or amounts due to Federal or State governments.

7.4 CONTRACT CLAIMS AND DISPUTES

7.4.1 Subsequent to a final decision rendered in writing by the Project Engineer as described in Article 2.2.14, all claims, disputes or other matters or questions between the Contractor and the Owner or A/E arising out of or relating to the performance of the Work or any termination hereunder shall be decided by the Director of Public Works or his designated representative. The Director of Public Works and/or his designated

representative shall issue his decision within thirty (30) days of his receipt of the claim, dispute or other matter. This decision shall be final unless the Contractor files a claim with the Town of Vienna pursuant to VA Code 15.2 – 1245-1249 (1950 as amended). Following the decision of the Town on the claim, the Contractor may institute legal action in the Circuit Court of Fairfax County.

7.5 ATTORNEYS' FEES AND OTHER EXPENSES

7.5.1 The Contractor hereby agrees that he will not submit, assert, litigate or otherwise pursue any claims that are without substantial justification. In the event that the Contractor's claim, or any separate item of a claim, is without substantial justification, the Contractor shall be liable to the Owner and shall pay the Owner for the percentage of all costs and expenses incurred by the Owner in investigating, analyzing, negotiating, appealing, and litigating the claim. The reimbursement shall be proportional to the percentage of the Contractor's total claim which is determined to be without substantial justification.

7.5.2 If the Contractor breaches the obligation stated in 7.5.1 above or any other obligation under the Contract Documents, the Contractor shall reimburse the Owner for all costs and expenses incurred by the Owner relating to such breach, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional A/E expenses and any other consultant costs.

7.5.3 If the Owner prevails in a claim brought against the Contractor, including but not limited to, claims for fraud or misrepresentation, overpayment, defective Work, delay damages, and recovery of termination expenses, the Contractor shall reimburse the Owner for all costs and expenses incurred by the Owner relating to such claim, including but not limited to attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional A/E expenses and any other related consultant costs.

7.6 RIGHTS AND REMEDIES

7.6.1 The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law, not inconsistent with the Contract Documents.

7.6.2 No action or failure to act by the Owner, A/E or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.6.3 Contractor agrees that he can be adequately compensated by money damages for any breach of this Contract which may be committed by the Owner and hereby agrees that, no default, act, or omission of the Owner or the Architect, except for failure to make payments as required by the Contract Documents, shall constitute a material breach of the Contract entitling Contractor to cancel or rescind the provisions of this Contract or, unless the Owner shall so consent or direct in writing, to suspend or abandon performance of all or any part of the Work. Contractor hereby waives any and all rights and remedies to which he might otherwise be or become entitled, saving only its right to money damages.

7.7 TESTS

7.7.1 If the Contract Documents, laws, ordinances, rules, regulations, permits, resolutions or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Owner timely notice of its readiness so that the Owner or the A/E or other representatives of the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs normally chargeable to Contractor of such inspections, tests or approvals conducted by public authorities.

7.7.2 All materials and Workmanship, if not otherwise designated by the specifications, shall be subject to inspection, examination or test by the Owner, A/E, and other representatives of the Owner, at any and all times during the manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. Special, full-sized and performance tests shall be as described in the specifications. Without additional charge, the Contractor shall furnish promptly all reasonable facilities, labor and materials necessary to make tests safe and convenient.

7.7.3 The selection of bureaus, laboratories and/or agencies for the inspection and tests of supplies, materials or equipment shall be subject to the approval of the Owner. Satisfactory documentary evidence, including but not limited to certificates of inspection and certified test reports, that the material has passed the required inspection and tests must be furnished to the Owner by the Contractor prior to the incorporation of the materials in the Work or at such times as to allow for appropriate action by the Owner.

7.7.4 Inspection or testing performed exclusively for the Contractor's convenience shall be the sole responsibility of the Contractor. Tests required as a result of the Contractor's or Subcontractor's error, omission or non-compliance with the Contract Documents, shall be paid for by the Contractor.

7.7.5 It is specifically understood and agreed that an inspection and approval of the materials by the Owner shall not in any way subject the Owner to pay for the said materials or any portion thereof, even though incorporated in the Work, if said materials are subsequently found out to be unfit to be used in the Work, nor shall such inspection be considered as any waiver of objection to the Work on account of the unsoundness or imperfection of the material used.

ARTICLE 8

CONTRACT TIME

8.1 DEFINITIONS

8.1 .1 Unless otherwise provided, the Contract Time is the period of time specified in the Owner-Contractor Agreement for Substantial Completion of the Work as defined herein, including authorized adjustments thereto. The Contractor shall complete his Work within the Contract Time.

8.1.2 The date of commencement of the Work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement or such other date as may be established therein.

8.1.2.1 The Contractor shall not commence Work, deposit or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the Owner's written consent. The contractor shall commence Work no later than ten (10) days after date of the Notice to Proceed.

8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date determined by Owner when: (1) construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended; and (2) the Contractor has satisfied all other requirements for Substantial Completion which may be set forth in the Contract Documents.

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

8.1.5 The term day as used in the Contract Documents shall mean calendar days unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION

8.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined herein. He shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial and Final Completion as required by the Contract Documents.

8.3 CLAIMS FOR TIME EXTENSIONS

8.3.1 The time during which the Contractor is delayed in the performance of the Work, by the acts or omissions of the Owner, the A/E or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes, riots, civil commotions or freight embargoes, or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the time for completion of the Work

(i.e., the Contract Time) stated in the Agreement; provided that the Contractor submits a request for extension of time for delays in compliance with the requirements of this Article and other all other related provisions of the Contract Documents.

8.3.2 The Owner shall not be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against the Owner on account of any indirect or direct damages, costs or expenses of any nature which the Contractor, its Subcontractors, or Sub-subcontractor's or any other person may incur as a result of (1) any delays, reasonable or unreasonable, foreseeable or unforeseeable which are either not caused by the acts or omissions of the Owner, its agents or employees or which arise from or out of (or owing to) causes not within the control of the Owner, its agents or employees, or (2) any reasonable delay regardless of its cause, it being understood and agreed that the Contractor's sole and exclusive remedy in any such events shall be an extension of the Contract Time, but only as determined in accordance with the provisions of the Contract Documents.

8.3.3 The burden of proof to substantiate a claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond his control. It shall be deemed that the Contractor has control over the supply of labor, materials, equipment, methods and techniques of construction and over the Subcontractors and suppliers, unless otherwise specified in the Contract Documents.

8.3.4 In the event of authorized Changes in the Work, any consideration by the Owner for a time extension will be made no later than when the Change Order is prepared.

8.3.5 No time extensions will be granted as a result of the Contractor's improper or unreasonable scheduling or for the Contractor's failure to have Shop Drawings, Product Data, Samples or Manuals submitted in ample time for review under a reasonable and agreed upon schedule.

8.3.6 Delays by Subcontractors or suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated herein.

8.3.7 The Contractor acknowledges and agrees that actual delays due to changes, suspension of Work or excusable delays, in activities which according to the schedule do not affect the Contract Time will not be considered to have any effect upon the Contract Time and therefore will not be the basis for a time extension.

8.3.8 The Contractor acknowledges and agrees that time extensions will be granted only to the extent that: (1) excusable delays exceed the available flexibility in the Contractor's schedule; and (2) Contractor can demonstrate that such excusable delay actually caused, or will cause, delay to the Contractor's schedule that will extend the Contract Time.

8.3.9 With respect to Suspensions of Work under Paragraph 3.6 herein, the Contractor shall be entitled to an extension of the Contract Time not to exceed the length of time that the Work was suspended (unless as determined under this Article and the other requirements of the Contract Documents that a further extension is justified and warranted) if the claim is submitted in accordance with the requirements of this Article, and if the suspension is not due to any act or omission of the Contractor, any Subcontractor or Sub-subcontractor or any other person or organization for whose acts or omission the Contractor may be liable. The Contractor's claim will be evaluated in accordance with the terms of this Article.

8.3.10 The Contractor shall not be entitled to any extension of time for delays resulting from any conditions or other causes unless it shall have given written notice to the Owner, within seven (7) calendar days following the commencement of each such condition or cause, describing the occurrence, the activities impacted and the probable duration of the delay. The Contractor's complete claim submittal for a time extension shall be submitted no later than twenty (20) calendar days after cessation of the delay or within such other longer period as the Owner may agree in writing to allow.

8.3.11 No such extension of time shall be deemed a waiver by the Owner of his right to terminate the Contract for abandonment or delay by the Contractor as herein provided or to relieve the Contractor from full responsibility for performance of his obligations hereunder.

8.3.12 The Contractor shall be liable to the Owner and shall pay it for a percentage of all costs incurred by the Owner in investigating, analyzing, negotiating, resolving any claim for costs or damages due to the alleged delaying of the Contractor in the performance of the Work, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined to be false or to have no basis in law or in fact.

8.4 CHANGE ORDER WORK

8.4.1 The Contractor shall make every reasonable effort to perform Change Order Work within the Contract Time and in such manner as to have minimum delaying effects on all remaining Work to be performed under the contract. If, however, the Change Order Work results in an unavoidable increase in the time required to complete the project, an extension of the Contract Time may be granted to the Contractor for the Change Order Work. The Contractor's request therefore shall be determined in accordance with the provisions of Article 8.3 herein and as follows:

1. If the time required for performance of the Change Order Work has an unavoidable direct delaying effect on the primary sequence of Work activities remaining after rescheduling (e.g., the critical path in CPM type scheduling), the overall contract time may be extended by the minimum number of days required for the Change Order Work as mutually agreed upon by the Owner and the Contractor;

2. If the time required for performance of the Change Order Work does not have an unavoidable direct delaying effect on the primary sequence of Work activities but is ordered by the Owner at a time such that insufficient Contract Time remains for completion of the Change Order Work (and any limited number of contingent Work activities), the Contract Time may be extended by the minimum number of days required for the Change Order Work as mutually agreed upon by the Owner and the Contractor but only for the Change Order Work and contingent activities, all other unaffected Work shall be performed within the Contract Time;

3. Failure of the Owner and the Contractor to agree on a Contract Time extension as specified in 8.4.1.1 and 8.4.1.2 above shall not relieve the Contractor from proceeding with and performing the Change Order Work promptly, as well as in such manner as to have minimal delaying effects on all remaining Work to be performed under the Contract. Such disagreement shall be resolved as soon as practical by negotiation.

8.5 LIQUIDATED DAMAGES FOR DELAY

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

8.5.2 The amount of liquidated damages provided in Article 4 of this Contract is neither a penalty nor a forfeiture and shall compensate the Owner solely for the Owner's inability to use the Work for its fully intended purpose, and is not intended to, nor does said amount include: (1) any damages, additional or extended costs, incurred by the Owner for extended administration of this Contract, or by the Owner's agents, consultants or independent contractors for extended administration of this Contract, or (2) any additional services, relating to or arising as a result of the delay in the completion of the Work. Owner shall be entitled to claim against Contractor for its actual damages and any amounts not specifically included within the liquidated damages as set forth herein. Such costs shall be computed separately and

together with liquidated damages, either deducted from the Contract Sum or billed to the Contractor, at the option of the Owner.

8.6 TIME EXTENSIONS FOR WEATHER

8.6.1 The Contract Time will not be extended due to inclement weather conditions which are normal to the general locality of Work site.

8.6.2 The Contractor, in his planning and scheduling of the Work as required by the Contract Documents, shall allow for the normal inclement weather for the locality of the Work site. If the Contractor believes that the Progress of the Work has been adversely affected and that it will directly result in a failure to meet a Contract Milestone date or Completion within the Contract Time, by weather conditions above and beyond the amount normally expected, he shall submit a written request to the Owner with a copy to the A/E for an Extension of Time, pursuant to Paragraph 8.3.

8.6.3 Such request shall be evaluated by the Owner in accordance with the provisions of the Contract Documents and shall include a comparison of actual weather statistics compiled by the Departments of Public Works, Town of Vienna, for the time of year, locality of the particular Work site with the days claimed by the Contractor and the anticipated normal inclement weather as stated in subparagraph 8.6.1. The normal inclement weather expected has been included in the designated Contract time for completion. The decision of the Owner shall be final.

8.6.4 The Contractor shall not be entitled to any money damages whatsoever for any delays resulting from inclement weather, whether normal or abnormal, foreseeable or unforeseeable. The Contractor and Owner stipulate and agree that for delays due to weather as determined in 8.6.3, the Contractor's sole relief is a time extension granted in accordance with this Article 8.6.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Owner-Contractor Agreement and, including authorized adjustments thereto, is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents. The Contract Sum includes, but is not limited to, the Contractor's profit and general overhead and all costs and expenses of any nature whatsoever (including without limitation taxes, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, foreseen or unforeseen, incurred by the Contractor in connection with the performance of the Work, all of which costs and expenses shall be borne solely by the Contractor. The Contractor agrees to assume all increases in costs of any nature whatsoever that may develop during the performance of the Work.

9.2 SCHEDULE OF VALUES

9.2.1 For Lump Sum type contracts, the Contractor shall utilize the payment request form furnished by the Owner. The Contractor shall provide a more detailed cost breakdown when so requested by the Owner.

9.3 APPLICATION FOR PAYMENT

9.3.1 The Contractor shall submit to the A/E four (4) originally executed, itemized Application for Payment and one (1) copy to the Owner on or before the day of each month designated in Article 6 of the Owner-Contractor Agreement. The Application for Payment shall be notarized, indicate in complete detail all labor and material incorporated in the Work during the month prior to submission, and supported by such data substantiating the Contractor's payment request as the Owner may require. The Contractor shall also certify that due and payable amounts and bills have been paid by the Contractor for Work for which previous Certificates of Payment were issued and payments received from the Owner.

9.3.2 INTENTIONALLY OMITTED

9.3.2.1 Unless otherwise provided for in the Special Conditions, Section F, no payment will be made for any materials stored off or away from the Work site.

9.3.3 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.4 The Contractor's Application for Payment shall provide that the payment request attests that all Work for which the request is made has been completed in full according to the drawings, specifications and other terms of the Contract Documents. By submitting his Application for Payment, the Contractor also represents that he has no knowledge that any Subcontractor or suppliers have not been fully and timely paid and that, insofar as he knows, the only outstanding items for payment with respect to the Contract are those to be paid from the funds for which Application is being made.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The A/E will, within seven (7) calendar days after the receipt of the Contractor's Application for Payment, recommend a Certificate for Payment to the Owner. This recommendation shall be for such amount as the A/E determines is properly due, with his reasons for withholding or adjusting a Certificate as provided in Paragraph 9.6, if any.

9.4.2 After the Certificate for Payment is recommended by the A/E, the Owner will review it and make any changes deemed necessary by the Owner's Representative. The recommendation of the Certificate for Payment by the A/E does not waive or limit the Owners right to reduce the amount of the payment due to the Contractor as determined to be appropriate by the Owner.

9.4.3 The recommendation of a Certificate for Payment will constitute a representation by the A/E to the Owner, based on his observations at the site as provided in Article 2 hereof and the data comprising the Application for Payment, that the Work has progressed to the point indicated; that, to the best of his knowledge, information and belief: (1) the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial or Final Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his Certificate); and that (2) the Contractor is entitled to payment in the amount certified. However, by recommending a Certificate for Payment, the A/E shall not thereby be deemed to represent that he has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work or that he has reviewed the construction means, methods, techniques, sequences or procedures, or that he has made any examination to ascertain how or for what purpose the Contractor has used the moneys previously paid on account of the Contract Sum.

9.5 PROGRESS PAYMENTS

9.5.1 The Owner shall make payment within seventeen (17) calendar days after receipt of the Certificate of Payment from the A/E based upon the Owner's approval or adjustment of said Certificate. The Contractor shall be paid the amount approved or adjusted by the Owner, less 5% retainage which is being held to assure faithful performance; provided however, that said retainage is not applicable to Time and Material Change Orders.

9.5.1.1 In the event the Contractor is allowed by law to use the escrow account procedure, and the Owner includes the "Escrow Agreement" form in the contract documents, six copies with original signatures and seals of the "Escrow Agreement" form included in the Bid Documents, shall be executed and submitted to the Owner, within fifteen (15) calendar days after receipt by the Contractor of Notice of Award. If the "Escrow Agreement" form is not submitted as noted herein, the Contractor shall forfeit such rights to the use of the escrow account procedure.

9.5.1.2 In order to have retained funds paid to an escrow agent, the Contractor, the escrow agent and the surety shall execute an "Escrow Agreement" form and submit same to the Owner for approval. The Contractor's escrow agent shall be a trust company, bank or savings and loan institution and shall be a qualified Public

Depository as defined in Section 2.2-4401 of the Code of Virginia, with its principal office located in the Commonwealth of Virginia. The "Escrow Agreement" form shall contain the complete address of the escrow agent and surety, and the executed "Escrow Agreement" will be authority for the Town of Vienna to make payment of retained funds to the escrow agent. The Contractor shall provide notice in any subcontract for this project which provides for similar progress payments that the subcontract is subject to the provisions of Section 2.2-4354 of the Code of Virginia. After approving the Agreement, the Owner will pay to the escrow agent the funds retained as provided herein. Funds retained for lack of progress or other deficiencies on the part of the Contractor will not be paid to the escrow agent. The escrow agent may, in accordance with the stipulations contained in the "Escrow Agreement", invest the funds paid into the escrow account and pay earnings on such investments to the Contractor or release the funds to the Contractor provided such funds are fully secured by approved securities as listed in the Escrow Agreement Form.

9.5.1.3 In relation to punch list or other uncompleted Work and in lieu of a portion of the above specified five percent 5% retainage, the Owner may, at his sole discretion, elect to retain fixed amounts directly relating to the various items of uncompleted Work. All amounts withheld shall be included in the Final Payment.

9.5.2 The Contractor shall, within seven (7) days after receiving payment from the Owner, do one of the following:

1. Pay all Subcontractors for the proportionate share of the total payment received from the Owner for Work performed by each Subcontractor under the contract;
2. Notify the Owner and Subcontractor(s), in writing, of his intention to withhold all or part of the Subcontractor's payment with the reason for nonpayment.

9.5.3 The Contractor shall make payment to Subcontractors as heretofore specified. Each payment shall reflect the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work.

9.5.4 The Contractor shall provide the Owner with his social security number, if an individual and their federal identification number if a corporation, partnership, or proprietorship.

9.5.5 The Contractor shall be obligated to pay unpaid Subcontractors interest on payments which are not made in accordance with this Article 9.5. The rate of interest shall be the legal prevailing rate at the time of nonpayment. The Contractor shall, by an appropriate agreement with each Subcontractor require each Subcontractor to make payments to his sub-subcontractors according to all the same requirements as provided in this Article 9.5.

9.5.6 The Owner may, upon written request, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Owner on account of Work done by such Subcontractor.

9.5.7 Neither the Owner nor the A/E shall have any obligation to pay or ensure the payment of any monies to any Subcontractor except as may otherwise be required by law.

9.5.8 No Certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.6 PAYMENTS WITHHELD

9.6.1 The Owner may withhold the payment in whole or in part, if necessary to reasonably protect the Owner. If the A/E is unable to make representations as provided in subparagraph 9.4.3 and to recommend payment in the amount of the application, he will notify the Owner as provided in subparagraph 9.4.1. If the Contractor and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate

for Payment for the amount for which he is able to make representations with respect to payment due for Work performed. The Owner may also decline to certify or make payment or, because of subsequently discovered evidence or subsequent observations, they may nullify the whole or any part of any Certificate for Payment previously issued.

9.6.2 The Owner may withhold from the Contractor so much of any approved payment due him as determined in the judgment of the Owner to be necessary:

1. To protect the Owner from loss due to defective Work not remedied;
2. To protect the Owner upon notice of the filing in court or in an arbitration proceeding as may be required in any third party contract, of verified claims of any persons supplying labor or materials for the Work, or other verified third party claims;
3. To protect the Owner upon reasonable evidence that the Work will not be completed for the unpaid balance of the Contract Sum;
4. To protect the Owner upon reasonable evidence that the Work will not be completed within the Contract Time, or any Contract Milestones as established by this Contract;
5. To protect the Owner upon the Contractor's failure to properly schedule and coordinate the Work in accordance with or as required by the Contract Documents, or failure to provide progress charts, revisions, updates or other up-to-date scheduling data as required by the Contract Documents, or upon the Contractor's failure to provide as-built drawings as required herein, or upon Contractor's failure to otherwise substantially or materially comply with the Contract Documents.

9.6.3 The Contractor shall, concurrent with his submission of the Construction Schedule, submit a practicable and realistic payment schedule showing the dates on which the Contractor will submit each and every Application for Payment and the amount he expects to receive for each and every monthly progress payment. If during the performance of the Work, the Contractor expects to receive an amount for a monthly progress payment larger than that indicated on the payment schedule; the Contractor shall notify the Owner at least thirty (30) days in advance of that payment such that the necessary allocation of funds can be processed. In the event the Contractor fails to submit a practicable and realistic payment schedule, the Contractor's Application for Payment shall be honored only to the extent that the Work is actually performed and that the proportion of payments made to the Contract Sum does not exceed the proportion of the Contract Time expired as of the time of the request.

9.7 PROMPT PAYMENT

Pursuant to provisions of *Section 2.2-4352* of the Code of Virginia, the Town shall make payment not more than forty-five days after goods or services are received or not more than forty-five days (45) after the invoice is rendered, whichever is later. The Town shall pay interest in the event that payment against "proper" invoices is not made as prescribed in accordance with said section.

9.8 SUBSTANTIAL COMPLETION AND GUARANTEE BOND

INTENTIONALLY OMITTED

9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 For all highway utility projects, and any other projects that may be so designated by the Owner, a Certificate of Final Completion shall be issued by the A/E prior to final payment. At the Owner's sole option, this Final Completion Certificate may operate in lieu of a Certificate of Substantial Completion. The Contractor, prior to application for Final Payment and within the time specified for completion of the Work, shall complete all Work, to include punch list items and provide operating manuals and as-built data including updated technical drawings discussed in paragraph 4.13, for the Work, as completed and in place. Said Certificate of Final Completion shall be issued, even if a Certificate of Substantial Completion has been issued previously and temporary authority to operate the Work has been granted.

9.9.1.1 The Certificate of Final Completion shall certify that all Work has been completed substantially in accordance with Contract Documents and is ready for use by the Owner.

9.9.2 For all projects where Substantial Completion Certificates have been issued for various portions of the Work at differing times, the Contractor shall request and the Owner shall, prior to final payment, issue a Certificate of Final Completion which certifies that all required Work, including punch list items, has been completed in accordance with the Contract Documents.

9.9.3 Neither the final payment nor any remaining retainage shall become due until the Contractor submits to the A/E all of the following the following:

1. An Application for Payment for all remaining monies due under the Contract;
2. Consent of surety, if any, to final payment, unless otherwise waived by the Owner;
3. If required by the Owner, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of claims arising out of the Contract, to the extent and in such form as may be designated by the Owner. If any Subcontractor refuses to furnish waiver of claims satisfactory to the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify him against any such claim. If any such claim remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees;
4. As-built drawings, operation and maintenance manuals and other project close-out submittals, as required by the Contract Documents;
5. Construction releases as required by the Contract Documents from each property owner on whose property an easement for construction of this project has been obtained by the Owner, such release to be in the forms to be provided by the Owner. This release is for the purpose of releasing the Owner and the Contractor from liability, claims, and damages arising from construction operations on or adjacent to the easement and includes proper restoration of the property after construction. It shall be the Contractor's sole responsibility to obtain all such releases and furnish them to the Owner; and
6. A written certification that:
    1. The Contractor has reviewed the requirements of the Contract Documents,
    2. The Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents,
    3. Pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents,

4. The Contractor further certifies and represents that all equipment and systems have been installed in accordance with the Contract Documents and have been tested in accordance with specification requirements and are operational,

5. The Contractor hereby certifies and represents that the Work is complete in all respects and ready for final inspection.

9.9.4 Upon receipt of the documents required in subparagraph 9.9.3 and upon receipt of a final Application for Payment, the Owner will promptly make such final inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will promptly issue a final Certificate for Payment and, if required, a Final Certificate of Completion stating that to the best of his knowledge, information and belief, and on the basis of his observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance designated in the final certificate for payment is due and payable. The Owner's final Certificate for Payment will constitute a further representation that the conditions precedent to the Contractor's being entitled to final payment as set forth in Subparagraph 9.9.4 have been fulfilled. Payment shall be made in full to the Contractor within thirty (30) calendar days of the date of the A/E's final Certificate of Payment provided that the requirements of Article 9 have been fulfilled, except for an amount mutually agreed upon for any Work remaining uncompleted for which the Owner is entitled a credit under the Contract Documents. All prior estimates and payments, including those relating to change order Work shall be subject to correction by this final payment.

9.9.5 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by the issuance of Change Orders affecting final completion, and the A/E so confirms, the Owner shall, upon application by the Contractor and certification by the A/E, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than the retainage stipulated in the Contract Documents, and if bonds have been furnished in accordance with the Contract Documents, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the A/E prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.9.6 The making of Final Payment shall constitute a waiver of all claims by the Owner, except those arising from any of the following:

1. Unsettled claims;

2. Faulty, defective, or non-conforming Work discovered or appearing after Substantial or Final Completion;

3. Failure of the Work to comply with the requirements of the Contract Documents;

4. Terms of any warranties or guarantees required by the Contract Documents;

5. Fraud or bad faith committed by the Contractor or any subcontractor or supplier during performance of Work discovered by Owner after Final Payment.

9.9.7 The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor, except those previously made in writing and so identified by the Contractor, as unsettled at the time of the final Application for Payment. No payment, final or otherwise, shall operate to release the Contractor or his sureties from any obligations under this Contract or the Performance or the Guarantee Bonds.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout the Contract performance until Final Payment is made, and is not limited to regular Working hours.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

1. All employees on the Work and all other persons who may be affected thereby;
2. All Work, materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractor's. Machinery, equipment and all hazards shall be guarded or eliminated in accordance with the safety provisions of the Manual of Accident Prevention in Construction published by the Associated General Contractors of America, to the extent that such provisions are not in contravention of applicable law;
3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities currently in use or not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, permits, resolutions and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

10.2.2.1 The Contractor shall at all times safely guard the Owner's property from injury or losses in connection with the Contract. He shall at all times safely guard and protect his own Work and adjacent property as provided by law and the Contract Documents, from damage. All passageways, guard fences, lights and other facilities required for protection by local authorities or local conditions must be provided and maintained.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs, traffic control measures and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 The Contractor is responsible for the proper packing, shipping, handling and storage, including but not limited to shipment or storage at the proper temperature and humidity, of materials to be incorporated in the Work, so as to ensure the preservation of the quality and fitness of the material for proper installation and incorporation in the Work, as required by the Contract Documents. For example, but not by way of limitation, Contractor shall, when necessary, place material on wooden platforms or other hard and clean surfaces and not on the ground and/or place material under cover or in any appropriate shelter or facility. Stored materials or equipment shall be located so as to facilitate proper inspection. Material and equipment which is delivered crated shall remain crated until ready for installation. Lawns, grass plots or other private property shall not be used for storage purposes without the written permission of the owner or lessee unless otherwise within the terms of the easements obtained by the Owner.

10.2.6 In the event of any indirect or direct damage to public or private property referred to in Paragraphs 10.2.1.2 and 10.2.1.3, caused in whole or in part by an act, omission or negligence on the part of the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable, the Contractor shall at his own expense and cost promptly remedy and restore such property to a condition equal or better to than existing before such damage was done. The Contractor shall perform such restoration by underpinning, repairing, rebuilding, replanting, or otherwise restoring as may be required or directed by the Owner, or shall make good such damage in a satisfactory and acceptable manner. In case of failure on the part of the Contractor to promptly restore such property or make good such damage, the Owner may, upon two (2) calendar days written notice, proceed to repair, rebuild or otherwise restore such property as may be necessary and the cost thereof, or a sum sufficient in the judgment of the Owner to reimburse the owners of property so damaged, will be deducted from any monies due or to become due the Contractor under the Contract.

10.2.7 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents and the protection of material, equipment and other property. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

10.2.8 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger the safety of any portion of the Work.

10.2.9 The Contractor shall give notice in writing at least forty-eight (48) hours before breaking ground, to all persons, Public Utility Companies, owners of property having structures or improvements in proximity to site of the Work, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by the Contractor's operation, in order that they may remove any obstruction for which they are responsible and have representation on site to see that their property is adequately protected. Such notice does not relieve the Contractor of responsibility for any damages, claims, or defense or indemnification of all actions against Owner and A/E resulting from performance of such Work in connection with or arising out of Contract.

10.2.10 The Contractor shall protect all utilities and existing structures encountered while performing its Work, whether indicated on the Contract Drawings or not. The Contractor shall maintain utilities in service until moved or abandoned. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to starting the Work, at no cost to the Owner or the utility company. The Contractor shall maintain operating utilities or other services, even if they are shown to be abandoned on the Contract Drawings, in service until new facilities are provided, tested and ready for use.

10.2.11 The Contractor shall return all improvements on or about the site and adjacent property which are not shown to be altered, removed or otherwise changed to conditions which existed prior to starting Work.

10.2.12 The Contractor shall protect the Work, including but not limited to, the site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended for use in the Work,

and shall take all necessary precautions to prevent or minimize either damage to same or detrimental effect upon his performance or that of his subcontractors, caused by or owing to rain, snow, ice, run-off, floods, temperature, wind, dust, sand and flying debris. For example, but not by way of limitation, Contractor shall, when necessary, utilize temporary dikes, channels or pumping to carry-off divert or drain water, and shall as necessary tie down or otherwise secure the Work and employ appropriate covers and screens.

10.3 OBLIGATION OF CONTRACTOR TO ACT IN AN EMERGENCY

10.3.1 In case of an emergency which threatens immediate loss or damage to property and/or safety of life, the Contractor shall act, at his discretion and risk, to prevent threatened loss, damage, injury or death. The Contractor shall notify the Owner of the situation and all actions taken immediately thereafter. If, in the opinion of the Contractor, immediate action is not required, the Contractor shall notify the Owner of the emergency situation and proceed in accordance with the Owner's instructions. However, if any loss, damage, injury or death occurs that could have been prevented by the Contractor's prompt and immediate action, the Contractor shall be fully liable for all costs, damages, claims, actions, suits, attorney's fees and all other expenses arising therefrom or relating thereto.

10.3.2 Prior to commencing his Work and at all times during the performance of the Work, the Contractor shall provide the Owner two, twenty-four hour (24) emergency phone numbers where his representatives can be contacted.

ARTICLE 11

CHANGES AND MODIFICATIONS IN THE WORK

11.1 CHANGES IN THE WORK

11.1.1 The Owner, without invalidating the Contract and without notice to the surety, may order a Change or Modification in the Work consisting of additions, deletions or other revisions to the general scope of the Contract, or changes in the sequence of the performance of the Work. The Contract Sum and the Contract Time shall be adjusted accordingly. All such Modifications in the Work shall be authorized by Change Order, and all Work involved in a Change shall be performed in accordance with the terms and conditions of this Contract. If the Contractor should proceed with a Change in the Work upon an oral order, by whomsoever given, it shall constitute a waiver by the Contractor of any claim for an increase in the Contract Sum and/or Contract Time, on account thereof.

11.1.2 When the Owner and Contractor have agreed upon a Modification in the Work, but a written Change Order Document has not yet been executed, the Owner may, at its sole discretion and option, direct in writing the Contractor to proceed with the Change in the Work pending the execution of the formal Change Order. Contractor shall proceed in accordance with such direction.

11.2 FIELD ORDER

11.2.1 A Field Order is a written order to the Contractor signed by the Owner or A/E interpreting or clarifying the Contract Documents or directing the Contractor to perform minor changes in the Work. Any Work relating to the issuance of a Field Order shall be performed promptly and expeditiously and without additional cost to the Owner and within the Contract Time, unless the Contractor submits a Proposed Change Order, defined below, which is approved by the Owner. Field Orders shall be numbered consecutively by date of issuance by the Owner or A/E.

11.3 REQUEST FOR PROPOSAL

11.3.1 A Request For Proposal describes a proposed Change in the Work. The Contractor is required to submit a complete proposal for the total cost and additional time, if any, necessary to perform the proposed Change in the Work. Requests For Proposals shall be numbered consecutively by date of issuance by the Owner.

11.4 PROPOSED CHANGE ORDER

11.4.1 A Proposed Change Order is a written request from the Contractor to the Owner requesting a change in the Contract Amount and/or Contract Time. A Proposed Change Order is submitted as a proposal in response to a Request For Proposal or as a claim for an increase in the Contract Sum or Contract Time pursuant to the issuance of a Field Order. A Proposed Change Order must be submitted within twenty (20) days of the issuance of a Request For Proposal or a Field Order. Proposed Change Orders shall be

numbered consecutively by date of issuance by the Contractor. The Contractor shall also indicate on the Proposed Change Order the number of the Request For Proposal or the Field Order to which it responds.

11.4.2 In the case of a unit price contract, it is understood and agreed by the Contractor that the estimates of the quantities in unit price items are approximate only and presented solely for the purpose of comparing bids and may not represent the actual amount of Work to be performed. The Contractor, therefore, understands and agrees that the Owner reserves the right to increase, decrease or eliminate entirely the quantity of Work to be done under any item. If called upon to do more Work under any unit price item named in the bidding quantity basis Bidding Documents, he will perform all such additional Work and accept as payment the unit price named in the proposal, subject to the 20% deviation limitations specified in subparagraph 11.4.2.2.

11.4.2.1 The Contractor's Proposed Change Order shall be determined by applicable unit prices, if any, as set forth in the Contract.

11.4.2.2 However, if changes in quantities are greater or lesser than twenty percent (20%) of the original bid quantity the Owner or the Contractor shall have the right to review the unit price and negotiate a new unit price for the quantity greater than 120% or less than 80% of the original bid quantity.

11.4.2.3 It shall be understood that such unit prices shall constitute full payment for the extra Work performed, including plant, materials, labor, equipment, overhead, profit, and safety requirements.

11.4.3 If no such unit prices are set forth, and unless otherwise approved by the Owner, the Contractor's proposal shall be on a lump sum basis and shall be itemized and segregated by labor, equipment, and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any Subcontractors who will perform any portion of the Change in the Work and of any persons who will provide materials or equipment for incorporation therein.

11.4.3.1 The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of its Subcontractors, may include reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime labor, if overtime is authorized, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor).

11.4.3.2 The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of its Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales or use taxes.

11.4.3.3 The proposal may further include the Contractor's and any of his Subcontractor's reasonably anticipated equipment rental costs, except small hand tools, in connection with the Change in the Work. For rented equipment an hourly rental rate will be used which will be determined by using the monthly rental rates taken from the current edition of the Rental Rate Blue Book for Construction Equipment and dividing it by 176. An allowance will be made for operating costs for each and every hour the equipment is actually operating in accordance with the rates listed in the aforesaid Rental Book. The Contractor will be allowed only 65% of the rental rate on Contractor owned equipment.

11.4.4 Base Cost is defined as the total of labor, material and equipment rentals as described in subparagraphs 11.4.3.1, 11.4.3.2 and 11.4.3.3. The actual net cost in money to the Owner for the Change in the Work shall be computed as follows:

1. If the Contractor performs the Change in the Work, his compensation will be the Base Costs as described above, plus a mark-up of 20% or $2,000, which ever is greater for overhead and profit.

2. If the Work is performed by a bona fide Subcontractor, his compensation will be the Base Costs as described above plus a mark-up as described in Paragraph 11.4.4.1 for overhead and profit. The

Contractor's compensation will be a mark-up of ten percent (10%) of the Subcontractors Base Costs for his overhead and profit.

3. If the Work is performed by a bona fide Sub-subcontractor, his compensation will be the Base Costs as herein described plus a mark-up as described in Paragraph 11.4.4.1 for overhead and profit. The Subcontractors compensation will be a mark-up of ten percent (10%) of the Sub-subcontractor's Base Costs for his overhead. The Subcontractor's compensation will be a mark-up of ten percent (10%) of the Sub-subcontractor Base Costs for his overhead and profit.

11.4.5 The mark-up on the cost of labor, materials, and equipment described in Paragraphs 11.4.4.1, 11.4.4.2, and 11.4.4.3 shall compensate the Contractor or Subcontractor and Sub-subcontractor for all indirect costs associated with or relating to the Change in the Work including, but not limited to, labor and/or equipment inefficiency, changes in sequence, delays, interferences, impact on unchanged Work, gross receipts tax, superintendent, small tools, reproduction, administration, document preparation, insurance, unrelated safety requirements, temporary structures and offices, all other general and administrative, home office and field office expenses.

11.4.5.1 The mark-up on the cost of labor, materials, and equipment described in Paragraphs 11.4.4.2 and 11.4.4.3 shall compensate the Contractor or Subcontractor for all indirect costs associated with or relating to the change in the Work including but not limited to, gross receipt tax, superintendent, reproduction, administration, and insurance.

11.4.5.2 In event of a contract completion date time extension of unreasonable duration, the Contractor, shall also be compensated for additional costs of Superintendent, field office, and safety requirements, without mark-up, as they are related to the cause of the time extension.

11.4.6 In the event that it is necessary to increase the Contract Time in order to perform the Change in the Work, the Contractor shall provide an estimate of the increase in the Contract Time which shall be negotiated by the parties to the contract. The Contractor's request for a time extension shall be evaluated in accordance with the criteria described in Article 8.3.

11.4.7 If the Contractor's Proposed Change Order is rejected by the Owner as being within the scope of the Work required by the Contract Documents the Owner may, at its sole option and discretion, direct the Contractor to perform the Work which is the subject of the said Proposed Change Order; the Contractor shall then promptly proceed with said Work. Nothing herein shall excuse the timely performance by the Contractor of the Work because any Proposed Change Order is pending.

11.5 CHANGE ORDER

11.5.1 A Change Order is a written order to the Contractor signed by the Owner and the A/E, issued after execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Sum and/or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum and/or the Contract Time. Change Orders shall be numbered consecutively by date of issuance by the Owner and shall, if applicable, indicate the number of the Field Order(s), Request For Proposal(s) and/or Proposed Change Order(s) to which it relates.

11.5.1.1 If the Owner determines that the Contractor's Proposed Change Order, submitted pursuant to Article 11 for a change in the Contract Sum or Contract Time, is acceptable, the Owner shall prepare and issue, or cause to be prepared and issued, a Change Order which will authorize the Contractor to proceed with the Change in the Work for the cost and time stated in the Proposed Change Order, or as otherwise may be agreed upon by the parties. The amounts stated in the Change Order for the cost and time to perform the Change in the Work shall be binding on the parties upon acceptance.

11.5.2 After issuance of the Change Order, the Contractor shall ensure that the amount of the Performance and Payment Bond coverage has been revised to reflect the increase in the Contract Sum due to the Change Order.

11.5.3 If the Contractor's Proposed Change Order is not acceptable to the Owner or if the parties are unable to otherwise agree as to the cost and time necessary to perform the Change in the Work, the Owner may, at its sole option and discretion, direct the Contractor to perform the Work on a time and material basis. The Contractor shall then promptly proceed with the Work.

11.5.4 If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractor's, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendent of any nature whatsoever. The percent mark-ups for the Contractor, Subcontractors and Sub-subcontractor's shall be as described in subparagraphs 11.4.4 and 11.4.5.

11.5.4.1 Prior to starting the Work on a time and material basis, the Contractor shall notify the Owner in writing as to what labor, materials, equipment or rentals are to be used for the Change in the Work. During the performance of the Change, the Contractor shall submit to the Owner daily time and material tickets, which shall list the categories and amounts of labor and equipment for which Change Order compensation is to be charged for the previous Work day. Such tickets shall specifically include the following information: location and description of the Change in the Work, the classification of labor employed, including names and social security numbers of laborers, labor trades used, manhours, wage rates, insurance, taxes and fringe benefits, equipment and materials suppliers' quotations with detailed break-out and pricing, rental equipment hours and rates, and materials quantities and unit prices and such other evidence of cost as the Owner may require.

11.5.4.2 The Contractor shall commence submission of daily time and material tickets immediately upon commencement of the Change Order Work and continue to submit them until completion of the Change Order Work. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose.

11.5.4.3 The failure of the Contractor to provide any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.

11.5.4.4 For any Work performed on a time and material basis, the Contractor shall submit its complete submission of the reasonable actual cost and time to perform the Change in the Work within twenty (20) days after such Work has been completed or within such other longer period as the Owner may agree in writing to allow. The Owner and the A/E shall review the costs and time submitted by the Contractor on the basis of reasonable expenditures and savings of those performing the Change in the Work. If such costs and time are acceptable to the Owner, or if the parties otherwise agree to the actual reasonable cost to perform the Change in the Work, a Change Order will be issued for the cost and time agreed upon. The amounts stated in the Change Order for the cost and time to perform the Change in the Work shall be binding upon the parties.

11.5.5 The Contractor shall be entitled to costs as provided for in Article 11 which the Contractor, its Subcontractors, or Sub-subcontractors may incur as a result of delays, interferences, suspensions, changes in sequence or the like, which are unreasonable arising from the performance of any and all changes in the Work, caused by acts or omissions of the Owner, performed pursuant to this Article 11.

11.6 UNILATERAL CHANGE ORDER

11.6.1 In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work and the Owner does not elect to have the Change in the Work performed on a time and material basis, the Owner shall make a unilateral determination of the reasonable cost and time to perform the Change in the Work, based upon his own estimates, the Contractor's submission or a combination thereof. A Change Order shall be issued for the amounts of cost and time determined by the Owner and shall become binding upon the Contractor unless the Contractor submits its protest in writing to the Owner within thirty (30) days of the issuance of the Change Order. The procedure for the resolution of the Contractor's protest shall be as described in Article 11.10. Owner has the right to direct in writing the Contractor to perform the Change in the Work, which is the subject of such Unilateral Change Order. Failure of the parties to reach agreement regarding the cost and time of performing the Change in the Work, or any pending protest, shall not relieve the Contractor from performing the Change in the Work promptly and expeditiously.

11.7 DECREASES AND WORK NOT PERFORMED

11.7.1 Should it be deemed expedient by the Owner at any time that, while works are in progress, to decrease the dimensions, quantity of material or Work or vary in any other way the Work herein contracted for, the Owner shall have the full power to do so, and shall order and direct, in writing, such decreases to be made or performed without, in any way, affecting the enforcement of said Contract. The Contractor shall, in pursuance of such written orders and directions from the said Owner, execute the Work thereby ordered and directed, and the difference in expense occasioned by such decrease or diminution so ordered shall be deducted from the amount payable under this Contract.

11.7.2 If contracted Work is not performed, and such deletion of Work is not approved by the Owner, the Owner shall ascertain the amount of the credit due the Owner based on the reasonable value for completing the deleted Work as a separate project. Calculation of credit due may include without limitation, labor, materials, contractor mobilization and administration costs.

11.7.3 If Work is deleted from the Contract by Change Order, the amounts to be credited to the Owner shall reflect the same current pricing as if the Work were being added to the Contract at the time the deletion is ordered, and documentation will be required for a credit as specified in Article 11.5.4. If such deleted materials and equipment shall have already been purchased and stored on site and cannot be used in other projects, returned for credit or cannot be returned for credit at the price paid by the Contractor at the time of purchase, the Contractor shall be entitled, upon proper documentation and certification, to an adjustment in the pricing of the credit to avoid hardship to the Contractor. If necessary in order to establish such reasonable value, the Contractor may be required to submit a detailed breakdown of his original bid for the items or Work involved.

11.8 CHANGES IN LINE AND GRADE

11.8.1 The Owner reserves the right to make such alterations in the line and grade of various structures or pipe lines shown on the drawings, as may be necessitated by conditions found during construction or that in the judgment of the Owner or A/E appears advisable. The Contractor shall not claim forfeiture of Contract by reason of such changes by the Owner. In case of a unit price contract, if such changes increase the amount of the Work or materials, the Contractor will be paid according to the quantity of Work actually done at the prices established for such Work under the Contract.

11.8.2 In case of a lump sum contract, the price for the Work shall be negotiated as herein provided. If such alterations or changes diminish the quantity of Work to be done, they shall not constitute a claim for damages or for loss of anticipated profits in the Work which may be dispensed with, and the Work as constructed shall be paid for in accordance with the Contract prices as established for such Work under this Contract, as stated in the proposal submitted by the Contractor.

11.9 SUBSURFACE CONDITIONS FOUND DIFFERENT

11.9.1 Should the Contractor encounter subsurface and/or latent conditions at the site materially differing from those shown on the drawings or indicated in the specifications, he shall immediately give notice to the Owner of such conditions before they are disturbed. The Owner shall thereupon promptly investigate the conditions and if he finds that they materially differ from those shown on the drawings or indicated in the specifications, he shall at once make such changes in the drawings and/or specifications as he may find necessary. Any increase or decrease of cost resulting from such changes shall be adjusted in the manner provided herein for adjustments as to extra and/or additional Work and changes.

11.10 CLAIMS FOR ADDITIONAL COST AND/OR TIME

11.10.1 If the Contractor wishes to make a claim for an increase in the Contract Sum and/or Contract Time, he shall give the Owner written notice thereof within seven (7) calendar days after the commencement of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed as provided in Article 10. No claim shall be allowed and no amounts paid for any and all costs incurred if notice is not given to the Owner as herein provided. Any change in the Contract Sum and/or Contract Time resulting from such claim shall be authorized by Change Order. The Contractor's complete claim submittal, for an increase in the Contract Sum, shall be submitted no later than twenty (20) calendar days after the Work for which the claim is made has been completed or within such other longer period as the Owner may agree in writing to allow.

11.10.2 If the Contractor claims that additional cost or time is involved because of, but not limited to, (1) any written interpretation pursuant to Article 2, (2) any order by the Owner to stop the Work pursuant to Article 3 where the Contractor was not at fault, (3) failure of payment by the Owner pursuant to Article 9, or (4) any written order for a minor change in the Work issued pursuant to Article 11.8.1; the Contractor shall make such claim as provided in Subparagraph 11.10.1.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If any portion of the Work should be covered contrary to: (1) the request of the A/E or Owner; (2) requirements specifically expressed in the Contract Documents; or (3) the requirements of applicable Construction Permits, it must, if required in writing by the Owner be uncovered for their observation and shall be replaced at the Contractor's expense.

12.1.2 If any other portion of the Work has been covered which the Owner has not specifically requested to observe prior to being covered, the A/E or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused solely by the Owner, in which event the Owner shall be responsible for the payment of such costs. If such Work be found not in accordance with the Contract Documents and the condition was caused by a separate contractor, Contractor may proceed against said separate contractor as provided in Article 6.

12.2 WARRANTY AND CORRECTION OF WORK

12.2.1 The Contractor guarantees and warrants to the Owner all Work as follows:

1. That all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified;
2. That all Work will be of first-class quality and free of omissions and faulty, poor quality, imperfect or defective material or Workmanship;
3. That the Work shall be entirely watertight and leakproof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement which are attributable to defective materials or Workmanship;
4. That the Work, including but not limited to, mechanical and electrical machines, devices and equipment shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;
5. That consistent with requirements of the Contract Documents the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment; and
6. That the Work will be free of abnormal or unusual deterioration which occurs because of poor quality materials or Workmanship.

12.2.2 All Work not conforming to guarantees and warranties specified in the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

12.2.3 The Contractor shall within five (5) Working days after receipt of written notice from the Owner during the performance of the Work, reconstruct, replace or correct all Work rejected by the A/E or Owner as defective, as failing to conform to the Contract Documents, or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of reconstructing, replacing or correcting such rejected Work, including compensation for the AlE's additional services made necessary thereby.

12.2.4 If, within one (1) year after the Date of Substantial or Final Completion of the Work or designated portion thereof or within one (1) year after acceptance by the Owner of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified in the Contract Documents, the Contractor shall correct it within five (5) Working days after receipt of a written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation shall survive termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.5 Subject to limitation as prescribed by law, if at any time deficiencies in the Work are discovered which are found to have resulted from fraud or misrepresentation, or an intent or attempt to defraud the Owner by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work and any damages which Owner has incurred related thereto, regardless of the time limit of any guarantee or warranty.

12.2.6 Any materials or other portions of the Work, installed, furnished or stored on site which are not of the character or quality required by the specifications, or are otherwise not acceptable to the Owner, shall be immediately removed and replaced by the Contractor to the satisfaction of the Owner, when notified to do so by the Owner.

12.2.7 If the Contractor fails to correct defective or nonconforming Work as required by Articles 12.2.3 and 12.2.4, or if the Contractor fails to remove defective or nonconforming Work from the site, as required by Article 12.2.6, the Owner may elect to either correct such Work in accordance with Article 3.5 or remove and store materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten additional days written notice sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the A/E's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.8 The Contractor shall bear the cost of making good all Work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article.

12.3 ACCEPTANCE OF FAULTY, DEFECTIVE OR NON-CONFORMING WORK

12.3.1 If the Owner prefers to accept faulty, defective or nonconforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued at Owner option, to reflect a reduction in the Contract Sum in an amount to be determined by the Owner.

12.4 NO LIMITATION OF LIABILITY

12.4.1 Subject to limitation as prescribed by law, nothing contained in this Article shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the time period of one (1) year after the Date of Substantial or Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligations of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

ARTICLE 13

TERMINATION OF THE CONTRACT

13.1 CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE CONTRACT

13.1.1 If the Work shall be stopped by order of the Court or any other public authority for a period of three (3) consecutive months without act or fault of the Contractor or any of his agents, servants, employees or Subcontractors, the Contractor may, upon ten (10) days notice to the Owner, discontinue his performance of the Work and/or terminate the Contract. The Contractor may recover from the Owner payment for all Work executed and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit and damages. The Contractor shall not be obligated to pay to the Owner any excess of the expense of completing the Work over the unpaid balance of the compensation to be paid the Contractor hereunder.

13.2 OWNER'S RIGHT TO TERMINATE CONTRACT FOR CAUSE

13.2.1 The Owner, without prejudice to any other rights or remedy it may have, may by seven (7) days notice to the Contractor, terminate the employment of the Contractor and his right to proceed either as to the entire Work or, at the option of the Owner, as to any portion thereof and may take possession of the Work and complete the Work by contract or otherwise as the Owner may deem expedient if, in the opinion of the Owner:

1. The insolvency, bankruptcy or financial condition of the Contractor will hinder or impede the Contractor's fulfillment of all contractual obligations, including completion within the Contract Time; or
2. The Contractor shall refuse or fail, after Notice from the Owner, to supply enough properly skilled Workmen or proper material; or
3. The Contractor shall refuse or fail to prosecute the Work or any part thereof with such diligence as will insure its completion within the period herein specified, or any duly authorized extension thereof, or shall fail to complete the Work within said period; or
4. The Contractor shall fail to make prompt payment to persons supplying labor or materials for the Work; or
5. The Contractor shall refuse or fail to properly schedule and plan the Work, as specified herein, so as to perform the Work within the specified Milestone and Completion dates, or to provide scheduling or related information, revisions and updates as required by the Contract Documents; or
6. The Contractor shall fail or refuse to regard laws, permits, ordinances, resolutions, or the instructions of the Owner or A/E, or otherwise be guilty of a substantial violation of any provision of this contract.

13.2.2 If the Owner so terminates the employment of the Contractor, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the compensation to be paid to the Contractor hereunder shall exceed the expense of so completing the Work (including compensation for additional managerial, administrative and inspection services and any damages for delay) such excess shall be paid to the Contractor.

13.2.3 If such expenses shall exceed the unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess. If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the Work that is not terminated.

13.3 OWNER'S RIGHT TO TERMINATE CONTRACT FOR CONVENIENCE

13.3.1 The performance of Work under this contract may be terminated by the Owner in accordance with this article in whole, or from time to time in part, whenever the Owner shall determine that such termination is in the best interest of the Owner. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective.

13.3.2 After receipt of a Notice of Termination, the Contractor shall submit to the Owner his termination claim, in the form and with certification prescribed by the Owner. Such claim shall be submitted promptly but in no event later than three (3) months from the effective date of termination, unless one or more extensions in writing are granted by the Owner upon request of the Contractor made in writing within such three (3) month period or authorized extension thereof. However, if the Owner determines that the facts justify such action, he may receive and evaluate any such termination claim at any time after such three (3) month period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Owner may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

13.3.3 Subject to the provisions of subparagraph 13.3.2, the Contractor and the Owner may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this article, which amount or amounts may include a reasonable allowance for profit on Work completed; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of Work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount if satisfactory to the Owner. Nothing in subparagraph 13.3.4 of this article, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Owner to agree upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this article shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this subparagraph 13.3.3.

13.3.4 In the event of the failure of the Contractor and the Owner to agree, as provided in subparagraph 13.3.3, upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this article, the Owner shall pay to the Contractor the amounts determined by the Owner as follows, but without duplication of any amounts agreed upon in accordance with subparagraph 13.3.3.

13.3.4.1 INTENTIONALLY OMITTED

13.3.4.2 INTENTIONALLY OMITTED

13.3.5 INTENTIONALLY OMITTED

13.3.6 INTENTIONALLY OMITTED

13.3.7 INTENTIONALLY OMITTED

13.4 CONTRACTOR'S RESPONSIBILITIES UPON TERMINATION

13.4.1 After receipt of a Notice of Termination pursuant to Article 13.2 or 13.3 and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the contract on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
4. At the option of the Owner, assign to the Owner, in the manner, at the time, and to the extent directed by the Owner, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Owner, to the extent he may require, which approval or ratification shall be final for all the purposes of this article;
6. Transfer title and deliver to the Owner in the manner, at the times, and to the extent, if any, directed by the Owner:
    1. The fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material procured as a part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and
    2. The completed or partially completed drawings, releases, information, manuals and other property which, if the Contract had been completed, would have been required to be furnished to the Owner;
7. Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Owner, any property of the types referred to in 14.4.6 above, provided, however, that the Contractor:
    1. Shall not be required to extend credit to any purchaser, and
    2. May acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner and provided further that the process of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Owner may direct;
8. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
9. Take such action as may be necessary, or as the Owner may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

13.5 DISPUTES UPON TERMINATION

13.5.1 The provisions of 7.4 shall be applicable to any claim, dispute or other matter arising because of termination under this Article 13.

END OF SECTION D:

GENERAL CONDITIONS

SECTION E

TOWN OF VIENNA GENERAL TERMS AND CONDITIONS

VENDOR: THE GENERAL TERMS AND CONDITIONS WHICH FOLLOW APPLY TO ALL PURCHASES AND BECOME A DEFINITE PART OF EACH FORMAL INVITATION FOR BID, REQUEST FOR PROPOSALS, PURCHASE ORDER AND/OR OTHER AWARD ISSUED BY THE TOWN OF VIENNA, VIRGINIA, UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION DOCUMENTS. BIDDERS/OFFERORS OR THEIR AUTHORIZED REPRESENTATIVES ARE EXPECTED TO FULLY INFORM THEMSELVES AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS BEFORE SUBMITTING BIDS/PROPOSALS; FAILURE TO DO SO WILL BE AT THE BIDDERS'/OFFERORS' OWN RISK AND HE CANNOT SECURE RELIEF ON THE PLEA OF ERROR.

SUBJECT TO STATE, COUNTY AND LOCAL LAWS AND ALL RULES, REGULATIONS AND LIMITATIONS IMPOSED BY LEGISLATION OF THE FEDERAL GOVERNMENT, BIDS/PROPOSALS ON ALL SOLICITATIONS ISSUED BY THE PURCHASING OFFICE WILL BIND BIDDERS/OFFERORS TO APPLICABLE CONDITIONS AND REQUIREMENTS HEREIN SET FORTH UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION.

1. **CLARIFICATION OF TERMS:** If any prospective bidder/offeror has questions about the specifications or other solicitation documents, the prospective bidder/offeror should contact the Purchasing Agent or the person whose name appears on the face of solicitation NO LATER THAN SEVEN (7) WORKING DAYS BEFORE opening/closing date. Any revisions to the solicitation will be made only by addendum issued by the Purchasing Agent.

2. **PREPARATION & SUBMISSION:** In order to be considered for selection, the bidder/offeror must submit a complete response to the Invitation For Bid/Request For Proposals. One (1) original and one (1) copy of each bid/proposal must be submitted on the Town of Vienna Bid/Proposal Forms provided. The bid/proposal shall be signed by an authorized representative of the bidders'/offerors' firm and delivered to the proper location by the time and date specified on the cover page.

3 **ENVELOPE IDENTIFICATION:** The signed bids must be returned in a sealed envelope and identified as follows: "SEALED BID", show the IFB number, IFB subject, opening time, opening date, and bidder's name and address. In the case of proposals, the signed proposal cover page and proposal must be returned in a sealed envelope, marked clearly on the outside "SEALED COMPETITIVE NEGOTIATION", show the RFP number, RFP subject, closing time, closing date, and offeror's name and address.

   If a bid/proposal is mailed in an envelope, not identified as specified, the bidder/offeror takes the risk that the envelope may be inadvertently opened and the information compromised which may cause the bid/proposal to be disqualified. The Town reserves the right to declare such a bid/proposal as non-responsive. Bids/proposals may be hand delivered to the designated location.

4. **LATE BIDS/PROPOSALS:** LATE bids/proposals will be returned to bidder/offeror UNOPENED, if the IFB/RFP number and return address is shown on the envelope.

5. **QUOTATIONS TO BE F.O.B. DESTINATION:** Quote F.O.B. DESTINATION for all competitive sealed bids. If otherwise, show exact cost to deliver.

6. **PRICING ERRORS:** In case of an error in price extension, the firm fixed unit price shall govern.

7. **BID/PROPOSAL ACCEPTANCE PERIOD:** Bids shall be binding upon the bidder for sixty (60) days following the bid opening date. Proposals shall be binding upon the offeror for ninety (90) days following the proposal due date. Any bid/proposal on which the bidder/offeror shortens the acceptance period may be rejected.

8. **CORRECTION OR WITHDRAWAL OF BIDS AND CANCELLATION OF AWARDS UNDER COMPETITIVE SEALED BIDDING:** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such bid mistakes, shall be permitted. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the Town or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination made by the Purchasing Agent. No bid may be withdrawn when the result would be to award 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 (5%). If a bid is withdrawn, the lowest remaining bid shall be deemed to be the low bid. If the Purchasing Agent, the Using Department, or a designee of such, denies the withdrawal of a bid, he shall notify the bidder in writing stating his decision.

9. **TAXES:** The Town of Vienna is exempt from the payment of federal excise or state sales taxes on all tangible, personal property for its use or consumption except taxes paid on materials that will be installed by the bidder and become a part of real property.

   If a bidder is bidding on materials that require installation by the bidder and become a part of real property, the applicable taxes shall be included in the lump sum bid price for the installation of the material and not as a separate charge for taxes. The taxes shall be an obligation of the successful bidder and not of the Town, and the Town shall be

held harmless for same by the successful bidder.

The Purchasing Office will furnish a Tax Exemption Certificate (Form ST-12) upon request and if applicable to this contract.

When a bidder lists a separate tax charge on the Bid Form and the tax is not applicable to the purchase by the Town, the bidder will be allowed to delete the tax from its bid.

10. **USE OF BRAND NAME OR EQUAL:**
    a) Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders/offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the Town of Vienna, in its sole discretion, determines to be equal to that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
    b) The bidder/offeror is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalogs and technical details to enable the Town of Vienna to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid non-responsive. Unless the bidder/offeror clearly indicates in its bid/proposal that the product offered is an "EQUAL" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.
    c) It shall be understood that the burden of proof for an “equal” product shall be and remain the sole responsibility of the bidder. The Town’s decision of approval or disapproval of a proposed alternate shall be final. Nothing herein is intended to exclude any responsible bidder, its product or service or in any way restrain or restrict competition.

11. **SAMPLES:** Samples, if required, must be furnished free of expense to the Town of Vienna on or before date specified; if not destroyed in examination, they will be returned to bidder, if requested, at his expense. Each sample must be marked with the bidder's name and address, Town's request number and opening date. DO NOT ENCLOSE IN OR ATTACH BID TO SAMPLE.

12. **TRADE SECRETS/PROPRIETARY INFORMATION:** Trade secrets or proprietary information submitted by an Offeror in response to this Request for Proposal shall not be subject to public disclosure under the Virginia Freedom of Information Act (FOIA); however, the Offeror must invoke the protection of this section prior to or upon submission of data or materials to be protected and state the reasons why protection is necessary (Section 2.2-4342F of the Code of Virginia).

13. **DELIVERY:** Bids must show number of days required to place material in using agency's receiving area under normal conditions. Proposal must show the number of days required to provide the services/reports as specified.

    Failure to state delivery time obligates bidder/offeror to complete delivery in fourteen (14) calendar days or as specified. A five (5) day difference in delivery promise may break a tie bid. An unrealistically short or long delivery promise may cause a bid/offer to be disregarded. Consistent failure to meet delivery promise without valid reason may cause removal from bid list. Delivery shall be made during normal working hours, 8:00 am to 4:30 pm Monday through Friday, unless prior approval for another time period has been obtained from Consignee.

14. **DEFAULT:** In case of failure to deliver goods/services in accordance with the contractual terms and conditions, the Town of Vienna, Virginia, after due oral or written notice, may procure them from other sources and hold the defaulting Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Town of Vienna may have.

15. **TOWN’S RIGHT TO TERMINATE THE CONTRACT:** The Contract may be terminated by the Town for any one of the following reasons:

    a) If the successful bidder should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the successful bidder’s insolvency, or if the successful bidder should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to deliver the goods or services within the time specified, or if the bidder otherwise defaults, then the Town may without prejudice to any other right or remedy, and after giving the successful bidder seven (7) calendar days written notice, terminate the employment of the successful bidder and procure such goods or services from other sources. In such event, the successful bidder shall be liable to the Town for any additional cost occasioned by such failure or other default.
    b) In such cases, the successful bidder shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional; managerial and administrative services shall exceed the unpaid balance of the contract price, the successful bidder shall pay the difference to the Town.
    c) If the successful bidder should fail to make prompt payment to Subcontractor(s) for material or labor, persistently disregards laws, ordinances or the instruction of the Town, or otherwise be in substantial violation of any provisions of the Contract;
    d) Failure of the Contractor to promptly make good any defects in materials or work or any defects of any other nature, the correction of

which has been directed in writing by the Town;

e) Substantial evidence of collusion for the purpose of illegally procuring a contract or perpetrating fraud on the Town in the construction of work under contract.

f) Prior to termination of the Contract, the successful bidder and his Surety shall be notified in writing by the Town of the condition which makes termination of contract imminent. Ten (10) days after this notice is given, if a satisfactory effort has not been made by the successful bidder or his Surety to correct the conditions, the Town may declare the Contract terminated and notify the successful bidder and his Surety accordingly.

g) Upon receipt of notice of contract termination, the successful bidder shall immediately discontinue all operations. The Town may then proceed with the work in any lawful manner that they may elect until the project is final and complete.

h) The Town reserves the right to take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method is deemed expedient. In such case, the successful bidder 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 successful bidder shall pay the difference to the Town. The expense incurred by the Town as herein provided, and the damaged incurred through the Contractor's default, shall be certified by the Town.

i) Termination of the contract under this section is without prejudice to any rights or remedies of the Town.

j) The Town reserves the right to cancel and terminate any resulting contract, in whole or in part, without penalty, upon 60 days written notice to the Contractor/ Consultant. Any contract cancellation notice shall not relieve the Contractor/Consultant of the obligation to delivery and/or perform on all outstanding services performed prior to the effective date of cancellation.

k) Notwithstanding anything to the contrary contained in the contract between the Town and the successful bidder, the Town may, without prejudice to any other rights it may have, terminate the contract for convenience and with cause, by giving thirty (30) days written notice to the successful bidder.

1) In the event the Contract is terminated for cause related to the Contractor/Consultant's (or its Subcontractor's) hiring of unauthorized aliens, Contractor/Consultant, Contractor/Consultant hereby waives any claim to lost profits and the Town will proceed in accordance with subsections f) et seq. above.

16. **CONDITION OF ITEMS:** All items bid/proposed shall be new and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in bid invitation/proposal request. Verbal agreements to the contrary will not be recognized.

17. **SUBSTITUTIONS:** No substitutions or cancellations permitted without prior written approval by the Purchasing Agent.

18. **RIGHTS OF THE TOWN OF VIENNA:** The Town reserves the right to accept or reject all or any part of bids/proposals, waive minor technicalities/informalities and award the contract to the lowest responsive and responsible bidder or most qualified and best suited offeror to best serve the interest of the Town.

19. **NEGOTIATION WITH THE LOWEST BIDDER:**
   a) If all bids received exceed the available funds for the proposed purchase, the Town, pursuant to Town Code provisions, may meet with the lowest responsive and responsible bidder to discuss a reduction in the scope for the proposed purchase and negotiate a contract price within the available funds.
   b) After bid negotiations, the lowest responsible bidder shall submit an addendum to its bid, which addendum shall include the change in scope for the proposed purchase, the reduction in price and the new contract value.
   c) If the proposed addendum is acceptable to the Town, the Town may award a contract within funds available to the lowest responsible bidder based upon the bid as amended by the addendum.
   d) If the Town and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

20. **CONTRACTOR'S PERFORMANCE:**
   a) Goods and services must be delivered and rendered strictly in accordance with this bid and shall not deviate in any way from the terms, conditions, prices, quality, quantity, delivery instructions, and specifications of this bid.
   b) All goods and/or services delivered and/or rendered shall comply with all applicable federal, state, and local laws, and shall not infringe any valid patent or trademark. The successful bidder shall indemnify, keep, save, and hold the Town, its officers and employees, harmless from any liability for infringement and from any and all claims or allegations of infringement by the bidder or the Town, its officers and employees, arising from, growing out of, or in any way involved with the goods delivered or services rendered pursuant to this purchase.
   c) In the event that suit is brought against the Town, its officers and/or its employees, either independently or jointly with the bidder, the bidder shall defend the Town, its officers and employees, in any such suit at no cost to them. In the event that final judgment is obtained against the Town, its officers, and/or its employees, either independently or jointly with the bidder, then the bidder shall pay

such judgment, including costs and attorneys fees, if any, and hold the Town, its officers and employees, harmless there from.

d) The successful bidder shall ensure that its employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds.

e) The successful bidder shall not, in its product literature or advertising, refer to this purchase or the use of the bidder's goods or services by the Town of Vienna, Virginia.

f) The successful bidder shall cooperate with Town officials in performing the specified work so that interference with the Town's activities will be held to a minimum.

21. **DRUG-FREE WORKPLACE TO BE MAINTAINED BY THE CONTRACTOR** (Code of Virginia Section 2.2-4312)**:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibitions, (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

    For the purposes of this section, "*drug-free workplace"* means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Virginia Public Procurement Act, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana during the performance of the contract.

22. **NO DISCRIMINATION AGAINST FAITH-BASED ORGANIZATIONS:**
    The Town of Vienna does not discriminate against faith-based organizations as that term is defined in Virginia Code Section 2.2-4343.1.

23. **ANTI-TRUST:** By entering into a contract, the bidder/offeror conveys, sells, assigns, and transfers to the Town of Vienna 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 Vienna under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.

24. **INDEMNIFICATION:** The Contractor agrees to indemnify, defend and hold harmless the Town of Vienna, Virginia, its officers, agents, and employees from any claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The vendor agrees to protect the Town from claims involving infringement of patent or copyrights.

25. **TIE BIDS:** If there is a tie for low bid and all other considerations are equal, and if the public interest will not permit the delay of re-advertising for bids, the award shall be determined by drawing lots in public.

26. **PROHIBITION AS SUBCONTRACTORS UNDER COMPETITIVE SEALED BIDDING:** 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.

27. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor, in whole or in part, without the prior written consent of the Town of Vienna, Virginia.

28. **CONTRACT DOCUMENTS:** The contract entered into by the parties shall consist of the Invitation For Bid/Request For Proposal, the signed bid/proposal submitted by the Contractor, the Town of Vienna's standard Purchase Order, the Mandatory/Special Specifications, Terms and Conditions, and the General Terms and Conditions, all of which shall be referred to collectively as the Contract Documents.

    If the contractor has a standard contract form, this form shall be submitted with the bid/proposal submittal for the Town's review of its terms and conditions.

29. **LICENSE REQUIREMENT:** All firms doing business in the Town of Vienna are required to be organized or authorized to transact business in the Commonwealth of Virginia or include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Additionally all firms doing business in the Town of Vienna are required to be licensed in accordance with the Town's "Business, Professional and Occupational Licensing (BPOL) Tax" Ordinance. 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, Business License Office, Telephone number (703) 255-6321. The BPOL License number must be indicated on the submitted bid form.

30. **AWARD:** The contract shall be awarded to the lowest responsive and responsible bidder or the most qualified and best suited offeror.

The Town Council will award all contracts in the amount of ten-thousand dollars ($10,000.00) or more.

The Purchasing Agent will award all contracts less than ten-thousand dollars ($10,000.00).

The Purchasing Agent shall sign all contract documents, with the exception of "Construction" contracts, and issue a purchase order to the successful bidder/offeror.

31. **COMPENSATION:**
    a) It is the Town's policy not to pay for any goods or services until the same have been actually received.
    b) Individual contractors shall provide the Purchasing Office their social security numbers and proprietorships, partnerships and corporations shall provide the federal employer identification numbers (Code of Virginia, Section 2.2-4354.2). This information shall be provided in the space indicated on the Bid Form.
    c) The successful bidder shall submit a complete itemized invoice on each item or service, which is delivered under the contract. The successful bidder shall indicate the purchase order number on the front of each invoice and on the outside of each package or shipping container.
    d) Cash discounts shall be deducted in accordance with the terms of the bid.
    e) Payment shall be rendered to the successful bidder for satisfactory compliance with the general terms, conditions and specifications of this bid. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of such goods or services; or (ii) if such date is not established by contract, not more than forty-five (45) days after goods or services are received or not more than forty-five (45) days after the invoice is rendered, whichever is later (Code of Virginia, Section 2.2-4352).
    f) Unless otherwise provided under the terms of the contract for the provisions of goods and services, if the Town fails to pay by the payment date, the Town agrees to pay the financial charge assessed by the successful bidder, which does not exceed one percent per month (Code of Virginia, Section 2.2-4354.4).

32. **METHOD OF PAYMENT:** Upon satisfactory delivery of the merchandise and/or satisfactory completion of the services, all invoices and statements shall reference the purchase order number and be submitted to:

    Town of Vienna
    ATTN: ACCOUNTS PAYABLE
    127 Center St., S.
    Vienna, VA 22180.

    The prices and payments shall be full compensation for the labor, tools, equipment, transportation and all other incidentals necessary to complete the specified terms and conditions.

33. **SUCCESSFUL BIDDER'S OBLIGATION TO PAY SUBCONTRACTOR:**
    a) The successful bidder awarded the contract for this project shall take one of the two following actions within seven (7) days after the receipt of amounts paid to the successful bidder by the Town for work performed by the successful bidder's subcontractor(s) under the contract (Code of Virginia, Section 2.2-4354):
        1. Pay the subcontractor(s) for the proportionate share of the total payment received from the Town attributable to the work performed by the subcontractor(s) under the contract; or
        2. Notify the Town and subcontractor(s), in writing, of their intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
    b) The successful bidder shall pay interest to the subcontractor(s) on all amounts owed by the successful bidder that remain unpaid after seven (7) days following receipt by the successful bidder of payment from the Town for work performed by the subcontractor(s) under the contract, except for amounts withheld as allowed in subparagraph a (2) of this section. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month.
    c) The successful bidder shall include in each of its subcontractors 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(s).
    d) The successful bidder's obligation to pay an interest charge to a subcontractor(s) pursuant to the payment clause in this section may not be construed to be an obligation of the Town. A contract modification may not be made for the purpose of providing reimbursement for such interest charge and a cost reimbursement claim may not include any amount for reimbursement for such interest charge.

34. **ANTI-DISCRIMINATION:** By submitting their bids/proposals all bidders/offerors certify to the Town of Vienna that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

    In every contract over $10,000.00 the provisions in A and B below apply:

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

        The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where religion, sex or national origin 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.

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.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

b) The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over $10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

35. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the Code of Virginia (1950), as amended, shall be applicable to all contracts solicited or entered into by the Town of Vienna. A copy of these provisions may be obtained from the Purchasing Agent upon written request.

By submitting their bids/proposals, all bidders/offerors certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction 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.

36. **CRIMINAL SANCTIONS:** The provisions referenced in Item 27 supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§§ 18.2-498.1 et seq.), and Articles 2 (§§ 18.2-438 et seq.) and 3 (§§ 18.2-446 et seq.) of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

37. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation 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 courts of the Commonwealth. The Contractor shall comply with applicable federal, state and local laws and regulations.

38. **LAWS AND REGULATIONS**: The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the work.

The Contractors and Subcontractors shall comply with the Virginia Contractor's Registration Law, Title 54.1, Chapter 11, Code of Virginia (1950), as amended.

All non-resident Contractors and Subcontractors submitting bids on the work described herein shall register with the Department of Labor and Industry under the provisions of Subsection 40.1-30 of the Code of Virginia (1950), as amended.

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 (1950), as amended, relating to labor unions and the "right to work", and all Contractors and Subcontractors, whether residents or non-residents of the Commonwealth, who perform work related to the project shall comply with all of said provisions.

The Contractor shall furnish the Owner copies of affidavits upon request giving original dates, renewal dates and expiration dates of all labor contracts related to any phase of the work to be performed on the job site under this contract.

The provisions of all rules and regulations governing 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 (1950), as amended, shall apply to all work under this contract.

The Contractor/Consultant shall comply with all laws and regulations of the Commonwealth of Virginia and the United States with respect to the employment of unauthorized aliens. Contractor/Consultant shall not hire or subcontract any portion of the work under this Contract to any individual the Contractor knows or reasonably should know to be an unauthorized alien as defined by 8 U.S.C. §1324a(h)(3). A violation of this provision shall constitute a material breach of the Contract and the Town may, in its sole discretion, terminate the contract.

39. **LABELING OF HAZARDOUS SUBSTANCES:** If the items or products requested by this solicitation are "Hazardous Substances" as defined by 3.1-250 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the bidder/offeror, by submitting his bid/proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products that the bidder/offer does not violate any of the prohibitions of Sec. 3.1-252 or the Code of Virginia or Title 15 U.S.C. Sec. 1263.

40. **MATERIAL SAFETY DATA SHEETS:** Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the bid/proposal or delivered materials for each chemical and/or compound offered. Failure of the bidder/offeror to submit such data sheets may be cause for declaring the bid/proposal as non-responsive.

41. **DEBARMENT STATUS:** By submitting their bids, Bidders certify that they are not currently debarred by the Commonwealth of Virginia or any Political Subdivision from submitting bids on contracts for the type of services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

42. **COOPERATIVE PROCUREMENT:** As authorized in Section 2.2-4304 of the Code of Virginia this procurement is being conducted on behalf of and may be used by public bodies, agencies, institutions and localities of the several states, territories of the United States, and the District of Columbia with the consent of the Contractor.

43. **RECORD RETENTION/TOWN AUDITS:**
    a) The successful bidder shall retain, during the performance of the contract and for a period of three (3) years from the completion of the contract, all records pertaining to the successful bidder's bid and any contract awarded pursuant to this Invitation for Bid. Such records shall include but not be limited to all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including successful bidder's copies of periodic estimates for partial payments; ledgers; cancelled checks; deposit slips; bank statements; journals; contract amendments and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the Town on demand and without advance notice during the successful bidder's normal working hours.
    b) Town personnel may perform in-progress and post-audits of the successful bidder's records as a result of a contract awarded pursuant to this Invitation for Bid. Files would be available on demand and without notice during normal working hours.

44. **MODIFICATION OF CONTRACT:** The Town may, upon mutual agreement with the Contractor, issue written modifications to the scope of work of this contract, and within the general scope thereof, except that no modifications can be made which will result in an increase of the original contract price by a cumulative amount of more than $50,000.00 or twenty-five percent (25%) of the amount of the original contract, whichever is greater, without the advance written approval of the Mayor and the Town Council. (Section 2.2-4309 of Virginia Public Procurement Act).

    Should it become necessary, for the best interest of the Town, to make modifications, the same shall be covered by change order. The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed in writing by the Town and the Contractor.

    If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the Town reserves the right to terminate the contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the work.

    The Town may, in writing, omit from the work any item, other than major items, found unnecessary to the project and such omission shall not be a waiver of any condition of the contract nor invalidate any of the provisions thereof. Major items may be omitted by change order.

    The Contractor shall be paid for all work done toward the completion of the item prior to such cancellation, alteration or suspension of the work by the Town.

    A major item shall be construed to be any item, the total cost of which is equal to or greater than ten percent (10%) of the total; contract amount for each separate alternate, computed on the basis of the proposed quantity and the contract unit price.

45. **SPECIFICATION FAMILIARITY:**
    a) It is the Bidder's responsibility to examine this entire IFB carefully. If a question arises as to the meaning or intent of these documents, inquiry must be made in writing to the Purchasing Agent.
    b) The submission of a bid shall indicate that the Bidder thoroughly understands the terms and conditions of the IFB.

46. **CONTRACT AND FORMS**:
    a) Bidders are advised that the Town does not sign standard contract forms that may be used by the bidder. The selected Bidder will be expected to enter into a contract with the Town for the commodities outlined in this IFB. The form of contract will be the Town's Purchase Order and/or Agreement.
    b) The bid form contains a signature line for the bidder that must be signed when submitting a bid. The signature certifies the bidder is an agent of officer authorized to bind the Contractor to the terms and conditions of the IFB.

47. **ADDENDA AND INTERPRETATIONS:** No interpretation of the meaning of these documents will be made to any bidder orally. Any request for an interpretation must be in writing addressed to Town of Vienna, 127 Center Street, South, Vienna, VA 22180, Attention: Purchasing Agent. Faxed inquiries to the Purchasing Department fax number will also be accepted. To be given consideration, requests must be received at least five days prior to the date fixed for the submission of Bids. Any and all such interpretations and any supplemental instructions will be returned in writing to the prospective bidder requesting such interpretations, or will be in the form of written addenda which, if issued, will be sent to all prospective bidders, at the respective addresses furnished for such purpose, not later than three days prior to the date fixed for the submission of Bids. Failure of any bidder to receive any such addenda or interpretations shall not relieve said bidder from any obligation under his Bid as submitted. All addenda so issued shall become part of the Contract Documents.

48. **INSURANCE:** The Contractor shall provide the Purchasing Agent with a Certificate of Insurance

PRIOR to the start of any work under the contract and agrees to maintain such insurance until the completion of the contract. The minimum limits of liability shall be:

Workers' Compensation -- Standard Virginia Workers' Compensation Policy

Broad Form Comprehensive General Liability--$1,000,000.00.

Combined Single Limit coverage to include:
Premises - Operations;
Products/Completed Operations;
Contractual; Independent Contractors;
Owners and Contractors
Protective; Personal Injury (Libel, Slander, Defamation of Character, etc.)

Automobile Liability--$500,000.00 Combined Single Limit.

The Town of Vienna, Virginia is to be named as an additional insured and this is to be so noted on Certificate of Insurance.

The policy shall be delivered to the Town of Vienna PRIOR to the commencement of any work.

A thirty (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the purchasing office at the address indicated on the solicitation.

Contractor's signature on this solicitation constitutes certification that, if awarded the contract, Contractor shall obtain the required coverage as specified herein within ten (10) days of notification of award.

49. **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY:**
   a) The successful Bidder's/Offeror's insurance shall cover the bidder/offeror and its subcontractors of every tier of those sources of liability which would be covered by the latest edition of the standard Worker's Compensation Policy, as filed for use in the Commonwealth of Virginia by the National Council on Compensation Insurance, without restrictive endorsements, but including Broad Form All States Endorsement. In addition to coverage for the Virginia Worker's Compensation Act, where appropriate, coverage is to be included for the United States Longshore and Harbor Worker's Compensation Act, Maritime including Jones Act, Federal Liability Act and any other applicable federal or state law.
   b) Subject to the restrictions of coverage found in the standard Worker's Compensation Policy, there shall be no maximum limit on the amount of coverage for liability imposed by the Virginia Worker's Compensation Act, the United States Longshore and Harbor Worker's Compensation Act, or any other coverage customarily insured under Part One of the standard Worker's Compensation Policy. The minimum amount of coverage for those coverages customarily insured under Part Two of the standards Worker's Compensation (inclusive of any amounts provided by an umbrella or excess policy) shall be $1,000,000 bodily injury by accident each accident, $1,000,000 bodily injury by disease each employee, and $1,000,000 bodily injury by disease policy limit or aggregate where such aggregate is applicable under the terms of the standard Worker's Compensation Policy.

50. **PROFESSIONAL LIABILITY:**
   a) The successful bidder/offeror shall provide the Town of Vienna with an Errors and Omissions Liability Policy (E&O Policy). The policy shall cover the Town of Vienna for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form, as filed for use in the Commonwealth of Virginia by the Insurance Services Office without the attachment of restrictive endorsements.
   b) The policy shall be endorsed to include the Town of Vienna's officials, officers, agents and employees as insured. The E&O Policy shall include the successful Offeror and the offeror's subcontractors of every tier as the designated in the declarations.
   c) The minimum E&O Policy limits to be provided by the successful Offeror (inclusive of any amounts provided by an umbrella or excess policy) shall be $1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. The limits afforded by the E&O Policy (or umbrella or excess policy with respect to it) shall apply only to the Town of Vienna officials, officers, agents and employees and only to claims arising out of or in connection with the work under this contract.

   The insurance provided by the successful Offeror pursuant to the resulting contract shall apply on a primary basis and any other insurance or self-insurance maintained by the Town of Vienna or the Town of Vienna official, officer, agent or employee shall be excess of and not contributing with the insurance provided by or on behalf of the Offeror.

   The coverages other than Worker's Compensation may be either on an occurrence or a claims-made basis. Provided, however, that claims-made coverage for other than the Products/Completed Operations shall respond to claims arising out of accidents, occurrences, incidents and offenses happening after the commencement of the resulting contract but before the end of the contract completion date provided that the claim is made within five years after the contract completion date.

   Prior to commencing work under a resulting contract, the successful Offeror shall furnish the Town of Vienna with a Certificate(s) of Insurance naming the Town of Vienna, its officers, employees and agents, as additional

insureds, giving a forty-five (45) day notice of cancellation, non-renewal, or change in the insurance coverage, and/or restrictions.

51. **SAFETY:** All contractors and subcontractors performing services for the Town of Vienna are required to comply with OSHA standards and accepted safety rules and regulations.

52. **OWNERSHIP OF PRODUCTS/SERVICES:** All control work, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the Town of Vienna.

53. **COLLUSION:** By submitting a bid/proposal in response to this solicitation, the Bidder/Offeror represents that in the preparation and submission of this bid/proposal, said Bidder/Offeror did not, either directly or indirectly, enter into any combination or arrangement with any person, Bidder/Offeror or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

SECTION F

SUPPLEMENTAL/SPECIAL CONDITIONS

I. PAYMENT FOR MATERIAL STORED OFF-SITE

INTENTIONALLY OMITTED

II. CONSTRUCTION SCHEDULE - BAR CHART

A. SCOPE

1. Pursuant to Paragraph 4.11 of the General Conditions of this Contract, the following additional scheduling requirements are a part of this Contract.
2. Work under this Section shall consist of furnishing a Construction Schedule showing in detail how the Contractor plans to execute and coordinate the Work. The Contract Schedule shall be based on and incorporate the Contract Milestones and Completion Dates specified in the Owner-Contractor Agreement and shall show the order in which Contractor shall perform the Work, projected dates for the start and completion of separable portions of the Work, and any other information concerning Contractor's Work scheduling as the Owner may request.
3. The Construction Schedule shall be in the form of a bar chart and shall consist of horizontal lines, or bars, plotted along a daily time scale. Each pay item designated in the unit price shall be denominated as a separate activity and represented by a horizontal bar or bars on the chart. The time scale shall indicate all required Milestone and Completion Dates as set forth in the Owner-Contractor Agreement. The horizontal bar(s) shall indicate the start and finish dates as well as the total time period of performance for each pay item activity. The Contractor shall arrange the chart so as to show the pay item activities which are necessary to fulfill each and every Milestone and Completion Date requirement.
4. Each Work item on the bar chart shall be broken into reasonable work segments/activities (where practicable) with individual starting and stopping dates. As a minimum, work shall be segmented to demonstrate its relationship to the various Milestone Dates, if any. The segmented Work activities shall be cost loaded to show its dollar value as a part of the entire pay item. Activity titles shall be self-explanatory; abbreviations shall be shown in the legend.

B. UPDATES AND REVISIONS

1. The chart shall be updated to show actual progress and the effect of modifications, delays and other events. A second bar for each work item, in a contrasting color or pattern, shall be drawn parallel to the proposed schedule to show actual progress and to forecast future progress. The actual start and stop dates shall be entered, as well as the actual dates of the Milestone events. Updates are to be submitted monthly, with and as a part of, the payment requests.

2. The updated Construction Schedule submitted by Contractor shall not show a completion date later than the Contract Time, subject to any time extensions approved by Owner; provided, however, that if Contractor believes he is entitled to an extension of the Contract under the Contract Documents, Contractor shall submit to Owner, with each update, a separate schedule analysis (entitled "Requested Time Adjustment Schedule") indicating suggested adjustments in the Contract Time which should, in the opinion of the Contractor, be made by time extension, due to changes, delays or conditions occurring during the past month or previously, or which are expected or contemplated by Contractor (whether such conditions are excusable under the Contract or are due to Contractor fault); this separate schedule, if submitted, shall be accompanied or preceded by a formal time extension request as required by the Contract and a detailed narrative justifying the time extension requested. To the extent any time extension requests are pending at the time of any update in the Construction Schedule, the "Requested Time Adjustment Schedule" shall be updated also each month, to reflect any adjustments made by Contractor in the Construction Schedule, or any time extensions previously granted by Owner, and to reflect actual or expected progress. Owner shall not have any obligation to consider any time extension request unless the requirements of the Contract Documents, and specifically, but not limited to these requirements, are complied with; and Owner shall not be responsible or liable to Contractor for any constructive acceleration due to failure of Owner to grant time extensions under the Contract Documents should Contractor fail to substantially comply with the submission requirements and the justification requirements of this Contract for time extension requests. Contractor's failure to perform in accordance with the Construction Schedule shall not be excused, nor be chargeable to Owner, because Contractor has submitted time extension requests or the "Requested Time Adjustment Schedule".

3. Neither the updating of Contractor's work schedule nor the submission, updating, change or revision of any other report or schedule submitted to Owner by Contractor under this Contract nor Owner's review or absence of objection regarding any such report or schedule shall have the effect of amending or modifying, in any way, the Contract Completion Date, Milestone Dates or of modifying or limiting in any way Contractor's obligations under this Contract.

4. All of Contractor's detailed calculations and documents supporting all schedules, reports, and forecasts shall be available to Owner on request.

5. Each updated Construction Schedule submitted by the Contractor shall be accompanied by a narrative report which reflects the following:

    a. Description of Work accomplished since submission of previous progress schedule;

    b. Comparison of the actual status of the Work with Contractor's project schedule;

    c. Status of equipment and material deliveries;

    d. Personnel staffing schedule;

    e. Causes of any delays;

    f. Revision of schedules; and

    g. Action proposed to restore schedule.

C. SCHEDULE OF OFF-SITE ACTIVITIES

INTENTIONALLY OMITTED

SECTION G

FORM OF BID

PROJECT NAME: **EAST STREET NE SIDEWALK CONSTRUCTION**

TO: Town of Vienna
Purchasing Agent
127 Center Street South
Vienna, Virginia 22180

CONTRACT NUMBER: IFB 13-07 (P.O. #)

FROM:

_____

_____

_____

A. Having carefully examined the Contract Documents entitled EAST STREET NE SIDEWALK IMPROVEMENTS and having visited the site and examined all conditions affecting the work, the undersigned agrees to furnish all labor and material, equipment and services necessary for the proper and timely completion of the work as required by said documents.

This bid is subject to all terms and conditions set forth in the Bidding Documents, defined in Paragraph A-2 of the Information for Bidders.

The undersigned agrees, if awarded the Contract, to execute and totally complete the work for the stipulated sum of:

BID: _____

_____ Dollars ($ _____)

(The above total price shall be listed using both words and numbers. In the event the base bid and the extension of unit prices do not agree, the unit prices shall govern. For discrepancies in Lump Sum bids, the written number shall govern over that in figures.)

B. All formal and written informal bids or proposals shall include the following provisions:

1. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of his or her knowledge no Town of Vienna official or employee having official responsibility for the procurement transaction, or member of his or her immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be

received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

2. Whenever there is reason to believe that a financial benefit of the sort described in Paragraph 1 has been or will be received in connection with a bid, proposal or contract, and that the contractor has failed to disclose such benefit or has inadequately disclosed it, the Town of Vienna, as a prerequisite to payment pursuant to the contract, or at any other time, may require the contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.

C. If notified of acceptance of this proposal and contract award within forty-five (45) calendar days after receipt of bids, the undersigned agrees to execute a contract for the above-named project Work and the above-stated consideration on the form required, within fifteen (15) calendar days of such notification. The undersigned hereby designates the office address stated on the first page of this proposal as the address to which a Notice to Award of this construction contract may be delivered and to which all office correspondence and notices may be mailed, or delivered by any means, unless the Owner is otherwise notified in writing.

D. The undersigned acknowledges receipt of the following addenda, and that the cost, if any, of such revisions has been included in the bid sum:

ADDENDUM RECEIVED (Initial and Date)

Addendum No. 1. _____ Addendum No. 4. _____

Addendum No. 2. _____ Addendum No. 5. _____

Addendum No. 3. _____ Addendum No. 6. _____

E. Included herein is the required written guarantee, “Contract Bond Certification” form, issued by a surety company licensed to conduct business in Virginia and acceptable to the Owner. This guarantee states that in the event a Contract is awarded to the bidder, the said surety will furnish a Performance Bond and a Labor and Material Payment Bond in an amount required by the Contract Documents in Section A, Information to Bidders, Paragraph A-10.

F. Included as a part of this Bid are the following documents which are to be submitted on the forms required, pages G-3 through G-12, as applicable.

1. The required Bid Security provided as Cash, Cashier’s Check, Certified Bidder’s Check, or an acceptable Bid Bond.

   The Bidder will ensure that the Bid Bond form contained herein is properly executed by an approved Surety and submitted with the Proposal Form at the time and the place on which bids are scheduled to be received. The failure on the part of a Bidder to enclose an executed copy of the Town of Vienna approved Bid Bond with the Proposal Form or a Certified or Cashier’s check or cash may result in the disqualification of the Bid.

2. A Certified Listing of Safety Violations, in accordance with Paragraph A-23 of the Information for Bidders. Said certification is made on the “Certification of Safety Violations” form and all other forms found in this section (B);

3. “Acknowledgement of Principal of Bidder...” form;

4. The statistical “Small and Minority Business Data” form;

5. The required "Contract Bond Certification" form;

6. If applicable, the "Bidder's Request for Equal Product or Substitution and Bidder's Representations" form;

7. If applicable, the Firm Fixed Price Bid and/or Alternate Bid forms provided at the end of this Section (B).

G. The undersigned hereby acknowledges that he has read and understands the varied nature of the work, the Drawings and Specifications, Addenda and all other Contract Documents pertaining to this project. The undersigned certifies that the Contract Documents are, in his opinion, adequate, feasible and complete for performing the Work and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract Documents. The undersigned further certifies that he has, or has available, the equipment, personnel, materials, facilities and technical and financial ability necessary to complete the Work in accordance with the Contract Documents and within the time specified therein. The Bidder certifies that he has made allowances for normal inclement weather indigenous to the Project site.

H. The following information is provided pursuant to the Contract Documents:

1. Legal Name of Firm:

_____

a. If Firm is a corporation, State that corporation is organized under the laws of the State of _____. Please affix corporate seal to this Form of Bid.

b. If Firm is a partnership, state names of partners:

c. If Firm is an individual using a trade name, state name of individual:

2. Virginia Contractor Registration Number: _____; Class: _____

3. Signature of Person or Persons legally authorized to bind Bidder to a Contract. A Bid submitted by an agent shall have a current Power of Attorney attached certifying the agent's authority to bind the Bidder.

a. Signature: _____ Date: _____

b. Name (Type): _____

c. Title: _____

(CORPORATE SEAL)

d. Address: _____

_____

I. The names and addresses of other persons interested as principals in this proposal are as follows:

_____

_____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, That we, _____.
(Bidder's Name)

_____,of _____
(Street Address) (City, State, Zip)

hereinafter called the Principal, and _____
(Surety's Name)

a corporation organized and existing under the Laws of the State of _____, and authorized to transact business in the State of Virginia, as Surety, hereinafter called Surety, are held and firmly bound unto the Town of Vienna, Virginia hereinafter called Obligee, in the Penal sum of _____ of the amount bid, good and lawful money of the United States of America, for the payment of which the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The Condition of this Obligation is such that, WHEREAS the Principal has submitted a proposal to the Obligee on a contract for **IFB 13-07 EAST STREET NE SIDEWALK IMPROVEMENTS.**

NOW THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the Bidding or Contract Documents with good and sufficient surety for the faithful performance of such construction for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void; otherwise to remain in full force and effect.

BID BOND-CONTINUED

In witness whereof, we have hereunto set our signatures and seal this _____ day of _____, _____, all pursuant to due authorization.

_____
Principal (SEAL)

By: _____
Surety

By: _____
Attorney-in-Fact in accordance
with the attached Power of Attorney

STATE OF _____)

) ss:

TOWN OF _____)

I, _____, a Notary Public in and for the State and Town aforesaid, do hereby certify that _____, and _____, whose names are signed to the foregoing bond, this day personally appeared before me in my aforesaid State and Town and acknowledged the same.

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

_____
Notary Public (SEAL)

My Commission expires:

_____

CERTIFICATION OF SAFETY VIOLATIONS

(Described in Article A-23)

I hereby certify that _____
(Name of Bidding Firm)

Located at; _____,
(Address of Bidding Firm)

has had the following safety violations described in Article A-23, paragraph A of the Information for Bidders, (if none so state):

_____

_____

_____

_____

_____

By: _____

Principal (SEAL)

State of: _____)

) ss:

Town of: _____)

On this _____ day of _____ , before personally came and appeared

_____ , to me known, who by me duly sworn, did depose and say that he is the _____ of the _____
_____
_____;

that he has the authority to bind the above named firm; and he represents and certifies the foregoing statements are, to the best of his knowledge, true and complete.

_____

Notary (SEAL)

My Commission Expires: _____

ACKNOWLEDGMENT OF PRINCIPAL OF BIDDER, IF A CORPORATION

State of _____)
) ss:
County of _____)

On this _____ day of _____, _____, before me personally came and appeared _____, to me known, who, being by me duly sworn, did depose and say that he resides at:

_____,

that he is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the impressions affixed to said instrument is an impression of such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

_____
(SEAL)

My Commission Expires: _____

ACKNOWLEDGMENT OF PRINCIPAL OF BIDDER, IF A PARTNERSHIP

State of _____)
) ss:
County of _____)

On this _____ day of _____ , _____, before me personally came and appeared, to me known, and known to me to be one of the members of the firm of _____, described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same as and for the act and deed of said firm.

_____
(SEAL)

My Commission Expires: _____

ACKNOWLEDGMENT OF PRINCIPAL OF BIDDER, IF A SOLE PROPRIETORSHIP

State of _____)
) ss:
County of _____)

On this _____ day of _____, _____, before me personally came and appeared , to me known, and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed same.

_____
(SEAL)

My Commission Expires: __

SMALL AND MINORITY BUSINESS DATA

We hereby provide the following information to the Town of Vienna regarding our firm. We understand that it is provided for statistical purposes only and all firms tendering bids will receive equal consideration for award.

Minority Business Firm: Yes_____; No _____.

Small Business Firm: Yes_____; No _____.

Contractor Subcategory: _____

Federal, State and Town Laws, orders and regulations, require the Town of Vienna to ensure that its procurement practices are non-discriminatory and promote equality of opportunity for Small and Minority Business Enterprises.

DEFINITIONS

The following definitions are to be used to identify Small Businesses, Minority Businesses and Contractor Subcategories:

Small Business: A corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees, or less than $1-Million in annual gross receipts.

Minority Business: A business enterprise that is at least 51-percent owned and controlled by a minority person or persons. Such persons include African Americans, Hispanic Americans, Asian Americans, American Indians, Eskimos and Aleuts; women regardless of race or ethnicity; and persons with a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment, or who are regarded as having such an impairment.

Contractor Subcategories:

A = Woman-Owned
B = Small (Non-Minority)
C = Small, Woman-Owned
D = Sheltered Workshop
E = African American Owned
F = African American Woman-Owned
G = Small, African American Owned
H = Small, African American Woman-Owned
I = Hispanic American Owned
J = Hispanic American Woman-Owned
K = Small, Hispanic American Owned
L = Small, Hispanic American Woman - Owned
M= Asian American Owned
N = Asian American Woman-Owned
0 = Small, Asian American Owned
P = Small, Asian American Woman-Owned
Q = American Indian Owned
R = American Indian Woman-Owned
S = Small, American Indian Owned
T = Small, American Indian Woman-Owned
U = Eskimo/Aleut Owned
V = Eskimo/Aleut Woman-Owned
W= Small, Eskimo/Aleut Owned
X = Small, Eskimo/Aleut Woman-Owned
Y = Large, Non-Minority
-- = Non-BML Firms

CONTRACT BOND CERTIFICATION

TO: Town of Vienna
c/c Purchasing Agent
127 Center Street South
Vienna, Virginia 22180

DATE: _____

FROM: (Surety) _____

_____

_____

REFERENCE: Project

_____

_____

Contract No. _____ Project No. _____

Bidder: _____

As surety for the above-named Bidder, the _____
(Surety Name)

_____

hereby certifies that we will promptly furnish the required Performance, Labor and Materials Payment and Guarantee Bonds, in separate instruments, as required by the General Conditions, on behalf of the above named Bidder, in the event that the said firm is determined to be the Successful Bidder and a construction contract is subsequently awarded for this project.

By: _____
Attorney-in-Fact,
in accordance with the attached Power of Attorney

BIDDER'S REQUEST FOR EQUAL PRODUCT OR SUBSTITUTION AND BIDDER'S REPRESENTATIONS

FROM:

_____

_____

_____

In submitting this Bid, the Bidder declares its intention to provide the following equal product or substitution in accordance with Addendum No. ____ and warrants that he has complied with the requirements of Paragraph A-17 of the Information for Bidders.

Description of Product:

_____

_____

_____

The undersigned Bidder hereby represents and certifies the following:

1. He has investigated the proposed equal product or method and determined that it is equal or better in all respects to that specified and that it fully complies with all requirements of the Contract Documents,
2. He has investigated the proposed substitution and has determined that it will satisfy all operational requirements as indicated in Contract Documents,
3. He will meet all contract obligations with regard to this equal products or substitution;
4. He will coordinate installation of accepted equal products or substitutions into the work, making all such changes and any required schedule adjustments, at no additional cost to the Owner, as may be required for the work to be complete in all respects;
5. He waives all claims for additional costs and additional time related to equal products or substitutions which consequently become apparent. He also agrees to hold the Owner harmless from claims for extra costs and time incurred by other subcontractors and suppliers, or additional services which may have to be performed by the A/E, for changes or extra work that may, at some later date, be determined to be necessary in order for the Work to function in the manner intended in the Contract Documents;
6. He will provide the same warranty and guarantee, and perform any work required in accordance therewith, for the equal product or substitution that is applicable to the specified item for which the equal product or substitution is requested;
7. Material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturer's recommendation and as specified in the Contract Documents;
8. In all cases new materials shall be used unless this provision is waived by notice from the Owner or his A/E, or unless otherwise specified in the Contract Documents; and

9. All material and workmanship shall in every respect be in accordance with what, in the opinion of the Owner or A/E, is in conformity with approved modern practice.

Bidder _____

By: _____

Title: _____

State of _____)

) to wit:

Town of _____)

On the _____ day of _____, _____ before me personally came and appeared, to me known, who by me duly sworn, did depose and say that he is the _____

_____ of the _____ ;

that he has the authority to bind the above named firm; and he represents and certifies the foregoing statements are, to the best of his knowledge, true and complete.

_____

(SEAL)

My Commission expires: _____

FORM OF BID

EAST STREET NE SIDEWALK CONSTRUCTION

CONTRACT NO. IFB 13-07

Show Invitation Number & Due Date on Envelope

Item	Class-Item	Quantity	Unit	Unit Price	Total
	Mobilization Shall Not Exceed 5% of the Bid	1	LS		
	Remove Existing Trees 6-18"	8	EA		
	Remove Existing Trees Greater than 30"	1	EA		
	Remove Existing Shrubs	28	EA		
	Regular Excavation (Strip topsoil 6")	50	CY		
	Install fill	333	CY		
	Remove Existing Sidewalk	112	SF		
	Install Sidewalk	82	SY		
	Remove Curb & Gutter	47	LF		
	Install Curb & Gutter	57	LF		
	Install Handicap Ramps	5	SY		
	Install Red Maple	1	EA		
	Install Willow Oak	1	EA		
	Install Red Oak	1	EA		
	Relocate Existing Sign	3	EA		
	Full Depth Saw Cut Asphalt	15	LF		
	Saw Cut Concrete	20	LF		
	Remove Existing Asphalt	4	SY		
	Install Silt Fence	130	LF		
	Install Inlet protection	2	EA		
	21-A Stone Aggregate	25	TN		
	Install Sod includes 2" Topsoil	200	SY		
	Total				

I hereby certify that the price on the above bid item is true and correct.

Signature: _____

Printed Name: _____

Address: _____

Phone and Email: _____

ORDER NO.:

SECTION H

TOWN OF VIENNA
ESCROW AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____ , 20 _____ by,

between, and among the Town of Vienna, Virginia ("Town"), _____

_____ (Contractor).

_____
(Name and Address of Bank)

a trust company, bank, or saving and loan institution with a principal office located in the Commonwealth of Virginia (hereinafter referred to collectively as "Bank") and _____

_____("Surety") provides:

I. The Town and the Contractor have entered into a contract with respect to Contract No._____ ("the contract"). This Agreement is pursuant to, but in no way amends or modifies, the contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

II. In order to assure full satisfactory performance by the Contractor of its obligations under the contract, the Town Treasurer is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of the Town, elected to have these retained amounts held in escrow by the Bank. This Agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the contract or any other instrument or agreement between the Town and the Contractor.

III. The Town shall from time to time pursuant to its contract pay to the Bank amounts retained by it under the contract. Except as actually withdrawn from escrow by the Town, the Contractor shall look solely to the bank for the payment of funds under the contract and paid by the Town to the bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this contract shall be solely upon the Contractor.

Funds and Securities held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien, or another process whatsoever. Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety.

IV. Upon receipt of checks or warrants drawn by the Town Treasurer and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

V. The following securities, and none other, are approved securities for all purposes of this Agreement:

(1) United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills.

ORDER NO.:

(2) Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States,

(3) Bonds of notes of the Commonwealth of Virginia,

(4) Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's

(Continued)

Investors Service rating of at least "A", and

(5) Certificates of deposit issued by Commercial Banks located within the Commonwealth, including, but not limited to, those insured by the Bank and its affiliates.

(6) Any bonds, notes or other evidences of indebtedness listed in Section V. (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having combined capital, surplus and undivided profit of not less than $25,000,000.00, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collaterized by the Securities themselves, and the securities have the date of the repurchase agreement at a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank. No security is approved hereunder which matures more than five years after the date of its purchase by the Bank or deposit by the Contractor.

VI. Upon receipt of a direction signed by the Town of Vienna Official, the Bank shall pay the principal of the fund, or any specified amount thereof, to the Treasurer of Vienna for the account of the Town of Vienna. Such payment shall be made in cash as soon as is practicable after receipt of the direction.

VII. For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or an may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same by the Contractor.

VIII. The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the principal of the fund.

IX. The Surety undertakes no obligation hereby but joins in the Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the contract are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written.

Resident Virginia Agent

TOWN OF VIENNA

_____

Contractor

BY:_____

Officer, Partner or Owner (Seal)

_____

Contractor

BY:_____

Officer, Partner or Owner (Seal)

By:_____

ORDER NO.:

_____
Contractor

BY:_____ _____
Officer, Partner or Owner (Seal) Officer, Partner Owner (Seal)

(Continued)

ATTEST:

_____ _____
Bank Officer Bank

By: _____
Vice-President

_____
Surety Company Surety Company

By:_____ By:_____
Attorney-in-fact (Seal) Attorney-in-fact (Seal)

_____ _____
Address Address

_____ _____
Surety Company Surety Bank

By:_____ By: _____
Resident Virginia Agent Attorney-in-fact (Seal)

_____
Address

APPENDIX A

RELEASE AND REQUEST FOR FINAL PAYMENT FORM

CONTRACT NUMBER: _____

CONTRACTOR NAME: _____

FINAL PAYMENT AMOUNT: _____

The Contractor hereby requests final payment in the amount indicated on the above referenced Contract. The Contractor agrees that its acceptance of final payment releases and forever discharges the Town of Vienna and its officers, employees, servants and agents from any and all actions, claims, demands and liability of whatever nature now existing or which may hereafter arise as a result of or in connection with the above referenced Contract.

The Contractor certifies that all of the debts for labor, materials, and equipment incurred in connection with the above referenced Contract have been fully paid.

AUTHORIZED SIGNATURE_____

DATE _____

ADDITIONAL VDOT CLAUSES

VIRGINIA DEPARTMENT OF TRANSPORTATION
SPECIAL PROVISION FOR

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals for female and minority participation, expressed in percentage terms of the Contractor's aggregate work force in each trade on all construction works in the covered area, are as follows:

   Females- 6.9%
   Minorities - See Attachment "A"

   The goals are applicable to all the Contractor's construction work performed in the covered area, whether or not it is Federal or federally assisted. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

   The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications, set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established herein. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executives Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 workings days the award of any construction subcontract in excess of $10,000 at any tier for construction works under this contract. The notification shall list the name, address and telephone number of the subcontractor, employer identification number, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract and the geographical area in which the contract is to be performed.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As, used in this provision:

   a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

   c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;

   d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors and Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth m the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the coverer area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U. S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, shall assign two or more women to each construction project. The Contractor shall specifically ensure that all foreman, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union, or if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper or annual report; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents and General Foremen prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including in any news media advertisement that the Contractor is "An Equal Opportunity Employer" for minority and female, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Directs its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by

recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used m the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for such opportunities through appropriate training or other means.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. Goals for women have been established. However, the Contractor IS required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner, that is even thought the Contractor has achieved its goals for women, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized.

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or nation origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246. as amended.

13. The Contractor, in fulfilling its obligations under these specifications shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from Its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director will proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate and make known to the Department a responsible official as the EEO Officer to monitor all employment related activity, to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

ATTACHMENT A

Economic Area	Goal (Percent)
Virginia:	
021 Roanoke-Lynchburg, VA	
SMSA Counties:	
4640 Lynchburg, VA	19.3
VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg	
6800 Roanoke, VA	10.2
VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem	
Non-SMSA Counties	12.0
VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll; VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland; VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Pulaski; VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista: VA Clifton Forge; VA Covington; VA Danville; VA Galax; VA Harrisonburg; VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton.	
022 Richmond, VA	
SMSA Counties:	
6140 Petersburg - Colonial Heights - Hopewell, VA	30.6
VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg.	
6760 Richmond, VA	24.9

VA Charles City; VA Chesterfield; VA Goochland, VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond.

Non-SMSA Counties 27.9
VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham, VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King and Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenburg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond VA Sussex; VA Charlottesville; VA Emporia; VA South Boston

023 Norfolk - Virginia Beach - Newport News VA:

SMSA Counties:

5680 Newport News- Hampton, VA 27.1
VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg.

5720 Norfolk - Virginia Beach - Portsmouth, VA - NC 26.6
NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach.

Non-SMSA Counties 29.7
NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA lsle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin.

Washington, DC:

020 Washington, DC.

SMSA Counties:

8840 Washington, DC - MD - VA 28.0
DC District of Columbia; MD Charles; MD Montgomery MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William VA Alexandria; VA Fairfax City; VA Falls Church.

Non- SMSA Counties 25.2
MD Calvert; MD Frederick; MD St. Marys: MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spotsylvania; VA Stafford; VA Warren: VA Westmoreland; VA Fredericksburg; VA Winchester WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan.

Tennessee:

052 Johnson City - Kingsport - Bristol, TN - VA

SMSA Counties:

3630 Johnson City - Kingsport -Bristol, TN-VA 2.6
TN Carter; TN Hawkins; TN Sullivan; TN Washington; VA Scott: VA Washington; VA Bristol.

Non-SMSA Counties 3.2
TN Greene; TN Johnson; VA Buchanan; VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer.

Maryland:

019 Baltimore MD

Non-SMSA Counties 23.6
MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worchester; VA Accomack; VA Northampton.

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: 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, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. 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 CFR 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 contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 “Contract provisions and related matters” with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting 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 the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

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 FHWA or the contacting 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.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term “perform work with its own organization” refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1**. Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for 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; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are 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 enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. 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 Federal agency, a Member of Congress, an 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.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this 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.

2. 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.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

Appendix B

CIVIL RIGHTS DIVISION REQUIREMENTS FOR LOCALLY ADMINISTERED PROJECTS (FEDERALLY FUNDED)

The BIDDER, its agents, employees, assigns or successors, and any person, firm, or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of the Virginia Fair Employment Contracting Act, Sections 2.2-4200 through 2.2-4201 of the Code of Virginia, as amended. During the performance of this Agreement, the BIDDER agrees as follows:

a. The BIDDER will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the BIDDER. The BIDDER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the BIDDER has agreements of over ten thousand dollars.

b. The BIDDER will, in all solicitations or advertisements for employees placed by or on behalf of the BIDDER, state that the BIDDER is an equal opportunity employer; provided, however, that 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.

The BIDDER will include the provisions of the foregoing paragraphs "a" and "b" in every subcontract or purchase order of over ten thousand dollars, so that such provisions will be binding upon each subcontractor or vendor. Nothing contained in this section shall be deemed to empower any agency to require any BIDDER to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such BIDDER in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth.

NON-DISCRIMINATION PROVISION: The BIDDER agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibits discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, sex or national origin; and further agrees to abide by Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order No. 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60), which prohibit discrimination on the basis of age. Sections 49 CFR 21 and 26 CFR 710.405(b) are incorporated by reference in all contracts and subcontracts funded in whole or in part with federal funds. The BIDDER shall comply with the Americans with Disabilities Act (ADA), and with the provisions of the Virginians with Disabilities Act, Sections 51.5-40 through 51.5-46 of the Code of Virginia, as amended, the terms of which are incorporated herein by reference.

In the event of the BIDDER'S noncompliance with the nondiscrimination provisions of this Agreement, the VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT) shall impose such contract sanctions as it or the Federal Highway Administration (FHWA) may determine to be appropriate, including but not limited to:

a. withholding of payments to the BIDDER under this Contract until the BIDDER complies; and/or

b. cancellation, termination or suspension of this Contract, in whole or in part.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964: During the performance of this Contract, the BIDDER, for itself, its assignees and successors in interest, agrees as follows:

a. Compliance with Regulations: The BIDDER will comply with the Regulations of the United States Department of Transportation relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (Title 49), Code of Federal Regulations, Part 21, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

b. Nondiscrimination: The BIDDER with regard to the services provided by it after award and prior to completion of this Agreement, will not discriminate on the grounds of race, color, sex, national origin, age or handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The BIDDER will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the services covers a program set forth in Appendix B of the Regulations.

c. Solicitations for Subcontractors: In all solicitations, either by competitive bidding or negotiation made by the BIDDER for work to be performed under a subcontract, including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the BIDDER of the BIDDER'S obligations under this Agreement.

d. Information and Reports: The BIDDER will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LOCALITY, the VDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the BIDDER is in the exclusive possession of another who fails or refuses to furnish this information, the BIDDER shall so certify to the LOCALITY, the VDOT, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.

e. Incorporation of Provisions: The BIDDER will include the provisions of paragraphs "a" through "e" in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order or instructions issued pursuant thereto. The BIDDER will take such action with respect to any subcontractor or procurement as the LOCALITY, the VDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, in the event the BIDDER becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the BIDDER may request the LOCALITY or the VDOT to enter into such litigation to protect the interests of the VDOT and, in addition, the BIDDER may request the United States to enter into such litigation to protect the interests of the United States.

CERTIFICATION REGARDING NON-SEGREGATED FACILITIES: By the execution of this Contract, the BIDDER certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location under its control, where segregated facilities are maintained. The BIDDER further certifies that no employee will be denied access to

adequate facilities on the basis of sex or disability. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom or otherwise. It agrees that, except where it has obtained identical certification from proposed subcontractors and material suppliers for specific time periods, it will obtain identical certification from proposed subcontractors or material suppliers prior to the award of subcontracts or the consummation of material supply agreements exceeding ten thousand dollars, and that it will retain such certifications in its files.

TDD/TTY EQUIPMENT FOR THE DEAF: When seeking public participation through the maintenance of a toll free hot line number and/or publishing project-related materials, the BIDDER agrees to ensure that all citizens have equally effective communication. The BIDDER agrees to provide or identify a telecommunications device for the deaf/teletypewriter (TDD/TTY) or acceptable means of telephone access for individuals with impaired speech or hearing. The BIDDER will provide notice of a TDD/TTY number whenever a standard telephone number is provided.

DISADVANTAGED BUSINESS ENTERPRISES: The BIDDER, its agents, employee, assigns, or successors, and any person, firm or agency of whatever nature with whom it may contract or make an agreement, shall comply with the provisions of 49 CFR, Part 26, as amended, which is hereby made part of this Agreement by reference. The BIDDER shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26, as amended, to ensure that DBE's have equal opportunity to compete for and perform on contracts and subcontracts under this Contract.

A Disadvantaged Business Enterprise ("DBE") is a business certified in accordance with the guidelines of 49 CFR, Part 26, as amended, by the United States Department of Transportation designated and approved agency. A listing of certified firms can be located at www.dmbe.state.va.us or by contacting the Department of Minority Business Enterprises, 200-202 9th Street, 11th floor, Richmond, VA 232219 or by calling (804) 786-6585.

RECORD KEEPING
The BIDDER shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, and other sources of information, and its facilities as may be determined by the LOCALITY, the VDOT or the FHWA to be pertinent to ascertain compliance with such regulations, orders and requirements.

The VDOT'S Civil Rights Division or Office of Inspector General Auditing Division and FHWA will perform audits as needed to ensure compliance with all Guidelines.

Form C-48
Rev. 2-23-11

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION FORM (ALL BIDDERS)

PROJECT NO. _____ **CONTRACT I.D. NO.** _____

FHWA NO. _____ **DATE SUBMITTED** _____

All bidders, including DBEs bidding as Prime Contractors, shall complete and submit the following information as requested in this form within ten (10) business days after the opening of bids.

The bidder certifies this form accurately represents its solicitation and utilization or non-utilization, as indicated, of the firms listed below for performance of work on this contract. The bidder also certifies he/she has had direct contact with the named firms regarding participation on this project.

BIDDER _____ **SIGNATURE** _____

TITLE _____

SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION (ALL)

VENDOR NUMBER	NAME OF SUBCONTRACTOR/SUPPLIER	TELEPHONE NUMBER	DBE OR NON-DBE	UTILIZED (Y/N)

NOTE: ATTACH ADDITIONAL PAGES, IF NECESSARY.

BIDDER MUST SIGN EACH ADDITIONAL SHEET TO CERTIFY ITS CONTENT AND COMPLETION OF FORM.

(**c105hf1**-0309) **SECTION 105.06 SUBCONTRACTING** of the Specifications is amended to include the following:

Any distribution of work shall be evidenced by a written binding agreement on file at the project site. Where no field office exists, such agreement shall be readily available upon request to Department inspector(s) assigned to the project.

The provisions contained in Form FHWA-1273 specifically, and other federal provisions included with the prime Contract are generally applicable to all Federal-aid construction projects and must be made a part of, and physically incorporated into all contracts, as well as, appropriate subcontracts for work so as to be binding in those agreements.

12-19-08 (SPCN)

PREDETERMINED MINIMUM WAGE RATES

Form C-112
Rev. 2-15-11

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CERTIFICATION OF BINDING AGREEMENT
WITH
DISADVANTAGED BUSINESS ENTERPRISE FIRMS

Project No.:

Federal Project No.:

This form is to be submitted in accordance with the Department's Special Provision for Section 107.15.

It is hereby certified by the below signed Contractors that there exists a written quote, acceptable to the parties involved preliminary to a binding subcontract agreement stating the details concerning the work to be performed and the price which will be paid for the aforementioned work. This document is not intended to, nor should it be construed to, contain the entire text of the agreement between the contracting parties. This document does not take the place of, nor may it be substituted for, an official subcontracting agreement in those situations that may require such an agreement. A copy of the fully executed *subcontract agreement* shall be submitted to the Engineer within fourteen (14) business days after contract execution.

It is further certified that the aforementioned mutually acceptable quote and fully executed subcontract agreement represent the entire agreement between the parties involved and that no conversations, verbal agreements, or other forms of non-written representations shall serve to add to, delete, or modify the terms as stated.

The prime Contractor further represents that the aforementioned mutually acceptable quote and fully executed subcontract agreement shall remain on file for a period of not less than one year following completion of the prime's contract with the Department or for such longer period as provisions of governing Federal or State law or regulations may require. For purposes of this form, the term Prime Contractor shall refer to any Contractor utilizing a DBE subcontractor, regardless of tier, in which they are claiming DBE credit toward the contract goal.

Contractors further jointly and severally represent that said binding agreement is for the performance of a "commercially useful function" as that term is employed in 49 C.F.R. Part 26.55 (c), (d).

DBE Contractor _____

By: _____ _____
Signature Title

Date: _____

*Subcontractor _____

By: _____ _____
Signature Title

Date: _____

* TO BE SIGNED BY THE SUBCONTRACTOR ONLY IF THEY HAVE A CONTRACT WITH THE ABOVE DBE FIRM

Prime Contractor _____

By: _____ _____
Signature Title

Date: _____

Form C-111
Rev. 2-15-11

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
MINIMUM DBE REQUIREMENTS

PROJECT NO. _____

FHWA NO. _____

*** * * INSTRUCTIONS * * ***

THIS FORM CAN BE USED BY THE CONTRACTOR TO SUBMIT THE NAMES OF DBE FIRMS TO BE UTILIZED ON THE PROJECT. THE CONTRACTOR SHALL INDICATE THE DESCRIPTION OF THE CATEGORY (S, M, SP or H) AND THE TYPE OF WORK THAT EACH DBE WILL PERFORM AND THE ALLOWABLE CREDIT PER ITEM(S). ADDITIONAL SHEETS TO SHOW THE ALLOWABLE CREDIT PER ITEM MAY BE ATTACHED IF NECESSARY. **PLEASE NOTE:** THE AMOUNT OF ALLOWABLE CREDIT FOR A DBE SUPPLIER IS 60% OF THE TOTAL COST OF THE MATERIALS OR SUPPLIES OBTAINED AND 100% FOR A DBE MANUFACTURER OF THE MATERIALS AND SUPPLIES OBTAINED. A CONTRACTOR MAY COUNT 100% OF THE FEES PAID TO A DBE HAULER FOR THE DELIVERY OF MATERIALS AND SUPPLIES TO THE PROJECT SITE, BUT NOT FOR THE COST OF THE MATERIALS AND SUPPLIES THEMSELVES.

DBE REQUIREMENT **0** **%**

PERCENT ATTAINED BY BIDDER _____ **%**

NAMES(S) AND CERTIFICATION NO. OF DBE(S) TO BE USED	USED AS SUBCONTR. (S) MFG. (M) SUPPLIER (SP) HAULER (H)	TYPE OF WORK AND ITEM NO(S)	$ AMOUNT OF ALLOWABLE CREDIT PER ITEM
		TOTAL	**$**

TOTAL CONTRACT VALUE $ _____ x REQUIRED DBE _____ % = $ _____

I/WE CERTIFY THAT THE PROPOSED DBE(S) SUBMITTED WILL BE USED ON THIS CONTRACT AS STATED HEREON AND ASSURE THAT DURING THE LIFE OF THE CONTRACT. I/WE WILL MEET OR EXCEED THE PARTICIPATION ESTABLISHED HEREON BY THE DEPARTMENT.

_____ BY _____
BIDDER SIGNATURE

_____ BY _____
TITLE DATE

Form C-104
Rev. 7-13-05

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

PROJECT:

FHWA:

This form must be completed, signed and returned with bid; and failure to do so may result in the rejection of your bid. **THE CONTRACTOR SHALL AFFIRM THE FOLLOWING STATEMENT EITHER BY SIGNING THE AFFIDAVIT AND HAVING IT NOTARIZED OR BY SIGNING THE UNSWORN DECLARATION UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES.** A SEPARATE FORM MUST BE SUBMITTED BY EACH PRINCIPAL OF A JOINT VENTURE BID.

STATEMENT, In preparation and submission of this bid, I, the firm, corporation or officers, agents or employees thereof did not, either directly or indirectly, enter into any combination or arrangement with any persons, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. Section 1) or Article 1.1 or Chapter 12 of Title 18.2 (Virginia Governmental Frauds Act), Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.

AFFIDAVIT

The undersigned is duly authorized by the bidder to make the foregoing statement to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

STATE of _____ COUNTY (CITY) of _____
To-wit:

I _____ , a Notary Public in and for the State and County(City) aforesaid, hereby certify that this day _____ personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this _____ day of _____ , 20 _____

_____ My Commission expires _____
Notary Public

OR

UNSWORN DECLARATION

The undersigned is duly authorized by the bidder to make the foregoing statement to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

Form C-105
Rev. 7-13-05

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
AFFIDAVIT

PROJECT:

FHWA:

This form must be completed, signed, notarized and returned with bid; and failure to do so, may result in the rejection of your bid. A separate form must be submitted by each principal of a joint venture bid.

1. I, the firm, corporation or officers, agents or employees thereof have neither directly nor indirectly entered into any combination or arrangement with any person, firm or corporation or entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract, the effect of which is to prevent competition or increase the cost of construction or maintenance of roads or bridges.

   During the preceding twelve months, I (we) have been a member of the following Highway Contractor's Associations, as defined in Section 33.1-336 of the Code of Virginia (1970). (If none, so state).

NAME	Location of Principal Office

2. I (we) have ____, have not ____, participated in a previous contract or subcontract subject to the equal opportunity clause, as required by Executive Orders 10925, 11114, or 11246, and that I/We have ____, have not ____, filed with the joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

   Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor [41 CFR 60-1.7(b)(1)], and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contract or subcontracts of $10,000 or under are exempt.)

   Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contract and subcontract unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

(Continued)

ORDER NO.:
CONTRACT ID. NO.:

3. The bidder certifies to the best of its knowledge and belief, that it and its principals:

   (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;

   (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   (c) Are 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 enumerated above; and

   (d) Where the bidders is unable to certify to any of the statements in this certification, the bidder shall show an explanation below.

Explanations will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any explanation noted, indicate below to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administration sanctions. The bidder shall provide immediate written notice to the Department if at any time the bidder learns that its certification was erroneous when submitted or has become erroneous by reason of change circumstances.

The undersigned is duly authorized by the bidder to make the foregoing statements to be filed with bids submitted on behalf of the bidder for contracts to be let by the Commonwealth Transportation Board.

Signed at _____ , this ____ day of _____ , 20 ____
County (City), STATE

_____ By: _____ _____
(Name of Firm) (Signature) Title (print)

STATE of _____ COUNTY (CITY) of _____
To-wit:

I _____ , a Notary Public in and for the State and

County(City) aforesaid, hereby certify that this day _____

personally appeared before me and made oath that he is duly authorized to make the above statements and that such statements are true and correct.

Subscribed and sworn to before me this _____ day of _____ , 20 _____

_____ My Commission expires _____
Notary Public

ADDITIONAL VDOT PROVISIONS

c100ll2 VDOT SSs_SPs_SPCNs (Local Assist)

VDOT SUPPLEMENTAL SPECIFICATIONS (SSs), SPECIAL PROVISIONS (SPs) AND SPECIAL PROVISION COPIED NOTES (SPCNs) 12-1-11 (SPCN)

cu105000a Work Zone Traff Control Pers Req

PERSONNEL REQUIREMENTS FOR WORK ZONE TRAFFIC CONTROL 6-11-09a (SPCN)