

REQUEST FOR PROPOSAL (RFP)



Issue Date: June 5, 2019

RFP # 71010-19-03-V2

Title: Stuarts Draft Park Shade Structures

Issuing Agency: **County of Augusta**
Central Accounting
18 Government Center Lane
P.O. Box 590
Verona, VA 24482

Location/Where Work Will Be Performed: Stuarts Draft Park, 96 Edgewood Ln, Stuarts Draft, VA 24477

Sealed Proposals Will Be Received Until **Monday, June 24, 2019 at 2:00 P.M.** for Furnishing The Goods/Services Described Herein.

All Inquiries For Information Should Be in Writing and Directed To: Elana Sorrell, VCA, Purchasing Assistant at esorrell@co.augusta.va.us or by Fax: (540) 245-5742.

IF PROPOSALS ARE MAILED, SEND DIRECTLY TO ISSUING AGENCY SHOWN ABOVE. IF PROPOSALS ARE HAND DELIVERED, THEN DELIVER TO: County of Augusta, Central Accounting Office, 18 Government Center Lane, Verona, VA.

The face of the envelope or shipping container shall be clearly marked in the lower left hand corner as follows:

RFP#: 71010-19-03-V2

RFP FOR: Stuarts Draft Park Shade Structures

PROPOSALS DUE: Monday, June 24, 2019, 2:00 P.M.

In Compliance With This Request For Proposal And To All The Conditions Imposed Therein And Hereby Incorporated By Reference, The Undersigned Offers And Agrees To Furnish The Goods/Services In Accordance With The Attached Signed Proposal Or As Mutually Agreed Upon By Subsequent Negotiation.

Firm Name and Address:

_____ Telephone () _____

_____ Fax () _____

_____ Email: _____

Signature _____ Date: _____

Type/Print: _____ Title: _____

EIN _____

Contractor's License # and Type: _____

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

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STUARTS DRAFT PARK SHADE STRUCTURES
REQUEST FOR PROPOSAL
PROPOSAL SCHEDULE

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Pre-Proposal Conference	June 12, 2019, 10:00 A.M.
Proposals Due	June 24, 2019, 2:00 P.M.
Distribute Proposals to Selection Committee	June 25, 2019
Selection Committee Interviews with Selected Firms	Week of July 8, 2019
Notice of Decision to Award	July 15, 2019
Award of Contract	July 26, 2019

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- I. PURPOSE:** This is a re-issuance of a previous solicitation, cancelled due to lack of response, which was verified as insufficient time for bidders to get quotes from the manufacturers. The purpose of this Request for Proposal (RFP) is to solicit sealed proposals to establish a contract through competitive negotiation for the design, fabrication, and installation of two soft shade structures at Stuarts Draft Park to provide shade for both the performance platform and the associated seating area.
- II. BACKGROUND:** The performance platform at Stuarts Draft Park was completed in the spring of 2016 with the terraced seating area being completed in the fall of that same year. Due to its orientation, the stage receives direct sunlight during the afternoon and evening while the seating is without any natural shade and is completely exposed. In order to mitigate sun exposure in both of these locations, the County is seeking proposals for shade structures.
- III. STATEMENT OF NEEDS:** Offeror must be a Class A Contractor licensed to do business in the Commonwealth of Virginia and the County of Augusta and shall furnish all labor, materials, insurance and supervision to provide the following goods and services related to the design, fabrication, and installation of two shade structures at Stuarts Draft Park to include, but not limited to, the following specifications:
1. Design and engineering of shade structures which shall blend in with existing infrastructure and surrounding environment at the locations specified on the attached map (Attachment E)
 - A. Several color options should be presented.
 - B. Shade fabric should be easily removable for seasonal installation.
 - C. Lifespan and expected degree or timeline of fading of shade fabric must be expressly stated and will affect evaluation of proposal
 - D. Fabric and structure must be rated to withstand 115 mph or greater ultimate wind speed. Such rating should be stated clearly in proposal.
 2. Acquisition of all permits and drawings necessary for such permits as required by the Community Development department.
 3. Fabrication of such shade structures as designed and approved
 4. Installation of shade structures as approved and according to all required standards.

PROPOSAL PREPARATION AND SUBMISSION INSTRUCTIONS:

A. GENERAL INSTRUCTIONS AND PROPOSAL PREPARATION:

1. Submission:

Proposals must be submitted no later than **2:00 P.M., Monday, June 24, 2019** to:

Elana Sorrell, Purchasing Assistant
Central Accounting Office
18 Government Center Lane
P.O. Box 590
Verona, VA 24482

Proposals must be in a sealed envelope and clearly marked:

RFP#: 71010-19-03-V2
RFP FOR: Stuarts Draft Park Shade Structures
PROPOSALS DUE: Monday, June 24, 2019, 2:00 P.M.

Proposals received after the closing date and time will not be accepted. Electronic proposals will not be accepted. The County of Augusta will not be responsible for late submissions due to weather, courier, mail or distribution of mail from the mailroom. Offerors are required to ensure delivery to the appropriate person and location as indicated in this RFP.

2. Identification of Response/Number of Responses: In order to be considered for selection, offerors must submit a complete response to this RFP. One (1) original (clearly marked) and six (6) copies of each proposal must be submitted. All sealed submissions shall be clearly marked on the cover of the envelope. The County of Augusta shall not be responsible for premature opening of submissions not clearly marked as instructed.

3. Economical Preparation: The County of Augusta intends that responses to this Request for Proposal be concise, informative, and inexpensive for the offeror to prepare. Emphasis should be placed on completeness and clarity of content.

4. Binding: All responses should be bound or contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

5. Oral Presentations: Offerors who submit a proposal in response to this RFP may be required to give an oral presentation of their proposal. This provides an opportunity for the offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiations. The County will schedule the time and location of these presentations. Oral presentations are an option of Augusta County and may or may not be conducted.

B. PROPOSAL CONTENT:

Signatures and Other Required Information: Proposals shall be signed by an authorized representative of the offeror. All information requested should be submitted. Failure to submit all information requested may result in the County requiring prompt submissions of missing information and/or giving a lowered evaluation of the proposal. Proposals which are substantially incomplete or lack key information may be rejected by the County. Mandatory requirements are those required by law or regulation or are such that they cannot be waived and are not subject to negotiation. Each proposal must contain:

- a. Page 1 of this RFP completed and signed by an authorized representative of the agency submitting the proposal.

- b. Completed Attachment A: Reference List
- c. Completed and signed Attachment B: Price List
- d. Itemized price list showing detail for each task involved with completion of the project. Itemization should present pricing for each task broken down for each shade structure.
- e. Complete manufacturer’s detailed description of material intended to be used and offeror’s intent/method to install same material. Total time needed to complete the project, including earliest possible start date, must also be included in the offeror’s proposal.
- f. Drawings or graphic renderings illustrating proposed design, shape, size, and location of shade structures.
- g. Other pertinent information about the offeror or the proposed material(s) that may be useful in the County’s evaluation process.

IV. EVALUATION AND AWARD CRITERIA:

A. EVALUATION CRITERIA: Proposals shall be evaluated by the evaluation committee using the following criteria:

FOR GOODS		POINT VALUE
1	Durability and practicality of shade material and structures	20
2	Compatibility of design of shade structures with park	10
3	Price	25
4	Timeliness of project completion	25
5	Reference check	15
6	Responsiveness to the RFP	05
TOTAL		100

B. AWARD OF CONTRACT:

- 1. The contract will be awarded to the offeror whose proposal conforming to the RFP documents, is most advantageous to the County, considering price and other evaluation criteria set forth in the proposal documents.
- 2. A contract shall not be assignable by the Contractor in whole or in part without the written consent of the County.
- 3. Ten (10) days prior to actual award of the contract, the County will issue a NOTICE OF INTENT TO AWARD.

- V. **PREPROPOSAL CONFERENCE:** A pre-proposal conference will be held on Wednesday, June 12th, 10:00 A.M. at Stuarts Draft Park, 96 Edgewood Ln, Stuarts Draft, VA 24477. ***Any bidders that were present at the May 8th Mandatory Pre-Bid Conference for RFP 7101-19-03 are NOT required to attend the June 12th, 2019 Pre-Bid Conference.**
- VI. **GENERAL TERMS AND CONDITIONS:** See Attachment C.
- VII. **SPECIAL TERMS AND CONDITIONS:** In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.
- A. **BEST AND FINAL OFFER (BAFO):** At the conclusion of negotiations, the offeror(s) may be asked to submit in writing, a Best and Final Offer (BAFO). After the BAFO is submitted, no further negotiations shall be conducted with the offeror(s). The offeror's proposal will be rescored to combine and include the information contained in the BAFO. The decision to award will be based on the final evaluation including the BAFO.
- B. **COSTS OF PROPOSAL PREPARATION:** Any costs incurred by the offerors in preparing or submitting proposals are the offerors' responsibility. The County will not reimburse any offeror for any costs incurred as a result of a response to this Request for Proposal.
- C. **PUBLIC INSPECTION OF PROCUREMENT RECORDS:** Proposals submitted shall be subject to public inspection only in accordance with Virginia Code § 2.2-4342.
- D. **PROPOSAL FORM, PROPOSAL DOCUMENTS AND SPECIFICATIONS:** The proposal form (page 1 of RFP), Reference List, Price Sheet and all proposal documents shall be part of the Contract.
- E. **AVAILABILITY OF FUNDS:** It is understood and agreed between the parties herein that the County of Augusta shall be bound hereunder only to the extent of the funds appropriated or which may hereafter be appropriated for the purpose of this contract. It is anticipated that funds shall be appropriated.
- F. **INSURANCE:** By signing and submitting a proposal under this solicitation, the Offeror certifies that if awarded the contract, (a) it shall have the following insurance coverage in place at the time the work commences, (b) it shall maintain such coverage during the entire term of the contract, (c) all insurance coverage shall be provided by insurance companies authorized to sell insurance in the Commonwealth of Virginia by the Virginia State Corporation Commission.
1. Insurance Coverage and Limits Required:
 - a. WORKER'S COMPENSATION - Statutory requirements.
 - b. EMPLOYER'S LIABILITY - Statutory requirements.
 - c. GENERAL LIABILITY - \$1,000,000.00 combined single limit. Augusta County is to be named as an additional insured with respect to the services being procured. This coverage is

to include Premises/Operations Liability, Products and Complete Operations Coverage, Independent Contractor's Liability, Owner's and Contractor's Protective Liability, Owner's and Contractor's Protective Liability and Personal Injury Liability.

- d. SPECIAL HAZARDS. In the event of the possibility of special hazards existing in the work contemplated, such hazards shall be covered by a rider to the policy or policies required in 1.c. above, in amounts not less than those stipulated in 1.c. If any special hazard is encountered during the performance of this contract, the Contractor shall, prior to performing any work involving the special hazard, immediately proceed with the procuring of such insurance.
2. The work performed under this Contract in every respect shall be at the sole risk of the Contractor, except damage or injury caused directly by representatives or employees of the County.
3. Nothing in this Document shall be construed to relieve the Contractor of maintaining any other insurance which they may be legally obligated to maintain.
4. A certificate showing Offeror's minimal coverage shall be included with the proposal.

G. BONDS:

1. RFP DEPOSIT. Proposals shall be accompanied by a deposit in the amount of two percent (2%) of the estimated total amount of the proposal. Such deposit, made payable to the County of Augusta, Virginia, may be in the form of a cashier's check or certified check issued by or drawn on a bank or trust company authorized to conduct business in the state, or a bidder's bond insured by a surety or other guaranty authorized to conduct business in the Commonwealth of Virginia.
2. PERFORMANCE AND PAYMENT BONDS. Upon award of the contract the successful Offeror shall be required to furnish surety bonds, or an acceptable letter of credit, payable to the County of Augusta, Virginia, in the amount of one hundred percent (100%) of the estimated total contract amount, guaranteeing the performance of the contract, and the payment of all persons having direct contracts with them for labor and materials, for a minimum period of six (6) months after cancellation of the contract upon default or the end of the contract period or any extension thereof, whichever occurs first. By submitting a proposal, all Offerors certify that they have received advance agreement for issuance of the necessary bonds and letters of credit from a surety and/or other financial institution, acceptable to the County Attorney, should they be awarded the Contract for the work specified

herein. The Offerors further understand that failure to provide the required bonds and/or letters of credit at the time of award of the Contract may result in their immediate disqualification without recourse. The form of bond or letter of credit shall be approved by the County Attorney.

- a. The performance and payment bonds shall take effect upon commencement of the Contract and shall continue for a minimum period ending six months after cancellation of the contract due to default or the end of the contract period or any extension thereof, whichever occurs first.
- b. For letters of credit issued for periods less than the minimum period indicated for performance and payment bonds in B.1. above, coverage shall not lapse prior to six months after cancellation of the contract due to default or the end of the contract period or any extension thereof, whichever occurs first. The renewed letters of credit shall be received by the County no less than sixty (60) business days prior to the expiration of the existing letter of credit.
- c. Upon request of the Contractor, the Board of Supervisors may reduce the surety when one-half of the project is completed.

- H. INDEMNIFICATION: The Contractor agrees to indemnify, defend and save harmless the County, its officers, agents, and employees, from and against any and all demands, actions, causes of action, damages (whether direct, indirect, incidental or consequential costs, losses, claims, and expenses (including attorney's fees)) of any and every kind arising out of any and all acts, errors, or omissions of the Company, its subcontractors, agents, or employees, in performing services under this Contract.
- I. CANCELLATION: Augusta County reserves the right to cancel and terminate any resulting Contract/Purchase Order, in part or in whole, without penalty, upon sixty (60) days written notice to the Contractor.
- J. OBLIGATION OF THE OFFEROR: By submitting a proposal, the Offeror certifies that it has inspected the proposal documents, are aware of the work to be performed, and familiar with the sites and the conditions under which the work must be accomplished. The obligation is fully understood by the Offeror and they shall not make any claim for, nor have a right to cancellation or relief from the contract because of, any misunderstanding or lack of information.
 1. The Offeror understands that it is the intent of these documents that the work be completely performed in every

respect, and that no additional compensation shall be allowed for minor tasks necessary to completely perform the work.

2. Should any work or materials be required which are not detailed in the Statement of Needs, either directly or indirectly, but which are nevertheless necessary for the proper carrying out of the County's intent thereof, the Contractor is to understand the same to be implied and required, and shall perform all such work and furnish any such materials as fully as if they were particularly delineated and described.

- K. SUBCONTRACTS: No portion of the work shall be subcontracted without prior written consent of Augusta County. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the County the names, qualifications, and experience of its subcontractors, and any other information requested by Augusta County. The Contractor shall remain fully liable and responsible for the work to be done by its subcontractor(s) and shall assure full compliance with all requirements of the Contract.
- L. PRIME CONTRACTOR RESPONSIBILITIES: The Contractor shall be responsible for completely supervising and directing the work under this Contract of its forces and all subcontractors utilized, using the best skill and attention possible. The Contractor agrees that they are fully responsible for the acts and omissions of its own employees and the acts and omissions of all subcontractors and persons employed by them.
- M. DRUG FREE WORKPLACE: During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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.

- N. **PROPERTY DAMAGES:** Any damage to property of the County, the property of its employees or the general public resulting from the performance of this contract shall be repaired immediately and to the satisfaction of Augusta County at the Contractor's expense.
- O. **USE OF PREMISES:** The Contractor expressly undertakes, either directly or throughout its subcontractors, to perform this work in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or at the location of the work and agrees to comply with all federal, state, and local laws and regulations relating to the activities. The Contractor shall take all necessary safety precautions, so as not to endanger its employees, County personnel, or the general public during the performance of the specified work.
- P. **METHOD OF PAYMENT:** Upon completion of the project by successful contractor and after satisfactory final inspection from the County the County will pay the Contractor's Statement of Amount Due within thirty (30) days of acceptance

VIII. PRICING SCHEDULE: Please see Attachment [B] for the price sheet.

IX. ATTACHMENTS:

Attachment A: Reference List

Attachment B: Price Schedule

Attachment C: Construction Contract with General Terms & Conditions

Attachment D: Instructions to Bidders (Offerors)

Attachment E: Site Map

Attachment A
RFP #71010-19-03-V2
Reference List
To Be completed by Offeror



1. QUALIFICATION OF OFFEROR: The offeror certifies it has the capability and capacity in all respects to fully satisfy all of the contractual requirements.
2. YEARS IN BUSINESS: Indicate the length of time you have been in business providing this type of services ____ years ___ months.
3. REFERENCES: Indicate below a listing of four (4) recent references for whom the offeror has provided this type of service. Include the date the services were furnished and the name and address of the person that the County has your permission to contact. If the offeror has not recently provided this type of service, list four (4) general references that the County has your permission to contact.

Date	Client	Phone Number and Person to Contact
_____	_____	_____
_____	_____	Phone _____
_____	_____	_____
_____	_____	Phone _____
_____	_____	_____
_____	_____	Phone _____
_____	_____	_____
_____	_____	Phone _____

Attachment B

RFP #71010-19-03-V2

Price Schedule



PRICE FOR SEATING AREA SHADE STRUCTURE (BASE CONTRACT)

(Numeric): \$ _____ dollars

(Written): \$ _____ dollars

BREAKDOWN: Design \$ _____ Fabrication/Acquisition \$ _____ Installation \$ _____

EARLIEST BEGIN WORK DATE: _____

NUMBER OF DAYS NEEDED FOR COMPLETION OF PROJECT: _____

PRICE FOR PERFORMANCE PLATFORM SHADE STRUCTURE (ADDITIONAL OPTION)

(Numeric): \$ _____ dollars

(Written): \$ _____ dollars

EARLIEST BEGIN WORK DATE: _____

BREAKDOWN: Design \$ _____ Fabrication/Acquisition \$ _____ Installation \$ _____

NUMBER OF DAYS NEEDED FOR COMPLETION OF PROJECT: _____

LUMP SUM PRICE FOR TOTAL PROJECT

(Numeric): \$ _____ dollars

(Written): \$ _____ dollars

EARLIEST BEGIN WORK DATE: _____

NUMBER OF DAYS NEEDED FOR COMPLETION OF PROJECT: _____

Firm Name and Address:

_____ Telephone () _____

_____ Fax () _____

_____ Email: _____

Signature: _____ Date: _____

Type/Print: _____

Title: _____ EIN#: _____

Contractor's License # and Type: _____

Attachment C
AUGUSTA COUNTY, VIRGINIA
CONSTRUCTION CONTRACT
WITH GENERAL CONDITIONS



Project Title: **Stuarts Draft Park Shade Structures**

RFP #: **71010-19-03-V2**

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between **THE COUNTY OF AUGUSTA, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "County" or "Owner," and _____, hereinafter referred to as "Contractor."

W I T N E S S E T H:

For and in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Contract documents. The Contract between County and Contractor shall consist of this document signed by the County and Contractor and the following documents which are expressly incorporated herein:

- A. The Request for Proposal (including all attachments) and Proposal submitted.
- B. General Conditions.
- C. Special Conditions.
- D. The Plans and Specifications.
- E. All modifications, including addenda and subsequent change orders.
- F. Any other documents expressly incorporated herein, or in any other construction document.

2. Contractor's obligations. the contractor shall (A) furnish all of the materials and perform all of the work in the construction of _____, hereinafter called the "Work," as more specifically defined in the attached General Conditions, in accordance with the attached Plans and Specifications on the land owned by the County designated as _____ in Augusta County, Virginia; and (B) perform and observe all its other obligations under the Contract Documents.

3. County's obligations. The County shall (A) pay the Contractor the Contract Price for its performance, in accordance with and subject to the applicable provisions in the attached Special Conditions; (B) obtain any needed construction financing; and (C) perform and observe all its other obligations under the Contract Documents.

4. Contract price. The contract price shall be the total base bid plus or minus any modifications, including addenda and subsequent change orders. The total base bid is \$ _____.

WITNESS the following signatures and seals:

COUNTY OF AUGUSTA, VIRGINIA

By: _____

(SEAL)

ATTEST: _____

Contractor

By: _____

(SEAL)

ATTEST: _____

**AUGUSTA COUNTY, VIRGINIA
CONSTRUCTION CONTRACT
GENERAL CONDITIONS**

1. DEFINITIONS

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

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

Bid: Whenever used, the word **bid** shall mean the proposal submitted by the offeror in response to this Request for Proposal.

Bidder: Whenever used, the word **bidder** shall mean the offeror submitting a proposal in response to this Request for Proposal.

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

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

Contract: This document signed by the County and Contractor, including all bid documents and other Contract Documents, hereinafter referred to as the Contract.

Contract Completion Date: The calendar date by which the Work must be substantially complete. The Contract Completion Date is customarily established in the Notice To Proceed, based on the Time for Completion. In some instances, however, the Contract contains a mandatory Contract Completion Date, which shall be stated in the Invitation to Bid. The Contract Completion Date may only be modified by a duly approved Change Order.

Contract Documents: The Contract between County and Contractor signed by the County and the Contractor and any documents expressly incorporated therein. Such incorporated documents customarily include the Invitation to Bid, the Bid submitted by the Contractor, these General Conditions, any Supplemental Conditions, the plans and specifications, all modifications to the foregoing, including addenda and subsequent Change Orders, and all documents incorporated by reference in the foregoing.

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

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

County: Augusta County, or the agency or department thereof which is a party to the Contract. For purposes of the Contract, the term County shall include the County, whether or not the County owns the site or the building.

County's or Owner's Representative: The Owner's Representative as used herein shall be the County's designated representative on the Project. The Owner's Representative shall be the person through whom the County generally conveys written decisions and notices. In the event of the incapacity or other unavailability of the designated Owner's Representative, the County Administrator shall be the Owner's Representative until a substitute is named.

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

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

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

Emergency: Any unforeseen situation, combination of circumstances, or a resulting state that would result in one or more of the following: (a) danger to life or property, (b) interruption or termination of essential services, (c) substantial financial loss to the procuring agency, or (d) inability to meet a mandatory deadline.

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

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

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

If the County and the Contractor agree in writing that Notices transmitted by Facsimile (Fax) or Email are acceptable for the Project, such Notice shall be transmitted to the Fax number or Email address listed in the agreement and, in the case of Fax, shall have a designated space for the Fax Notice recipient to

acknowledge his receipt by authorized signature and date. The Fax Notice with authorized signature acknowledging receipt shall be Faxed back to the sender. The Faxed Notice shall be effective on the date it is acknowledged by authorized signature. Emailed notices shall be acknowledged by Reply Email upon receipt. All Faxed and Emailed Notices shall also be sent by hard copy, which shall be effective upon delivery, as provided herein. Notice shall be effective upon the date of acknowledgment of the Faxed or the Emailed Notice or the date of delivery, whichever occurs first.

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

Owner: Augusta County, Virginia.

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

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

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

Project Inspector: One or more persons utilized by the County to inspect the Work for the County and/or to document and maintain records of activities at the Site to the extent required by the County. The County shall notify the Contractor in writing of the appointment of such Project Inspector(s).

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

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

Specifications: That part of the Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship which describe the proposed Work in sufficient detail and provide sufficient information for the Building Official to determine code compliance and for the Contractor to perform the Work.

Subcontractor: A person having a direct contract with Contractor or with any other Subcontractor for the performance of the Work.

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

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

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

Time for Completion: The number of consecutive days following the issuance of the Notice to Proceed which the Contractor has to substantially complete all Work required by the Contract. When the Notice to Proceed is issued, it states a Contract Completion Date, which has been set by the County based on the Time for Completion. The Time for Completion may only be modified by a duly approved Change Order.

Underground Facilities: Any item of public or private property which is buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, electronic telecommunications, electric energy, cable television, oil, petroleum products, gas, or other substances, and includes but is not limited to pipes, sewers, combination storm/sanitary sewer systems, conduits, wells, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground.

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

2. CONTRACT DOCUMENTS

(a) Original copies. The Contract between County and Contractor shall be signed by the County and the Contractor in as many original counterparts as may be mutually agreed upon, each of which shall be considered an original.

(b) Time of the essence. All time limits stated in the Contract Documents, including but not limited to the Time for Completion of the Work, are of the essence of the Contract.

(c) Severability clause. If any provision of this Contract shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision.

(d) Conflicting clauses. In the event there is a conflict between the provisions of the General Conditions and Supplemental Conditions, the provisions of the Supplemental Conditions shall apply. A specific provision in any other Contract Document shall take precedence over a provision of the General Conditions unless such precedence would result in a violation of law.

3. LAWS AND REGULATIONS

(a) The Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby.

(b) The Contractor shall assure that all Subcontractors and tradesmen who perform Work on the project are properly licensed by the Department of Professional and Occupational Regulation as required by the Code of Virginia and applicable regulations.

(c) If the Contractor violates laws or regulations that govern the Project, the Contractor shall indemnify and hold the County harmless against any fines and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct of the Contractor, the

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

4. NONDISCRIMINATION

(a) During the performance of this Contract, the Contractor agrees as follows:

i. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

ii. 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.

iii. 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.

iv. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over ten thousand dollars (\$10,000), so that the provisions will be binding upon each Subcontractor or vendor.

(b) Where applicable, laws protecting the rights of the disabled, including the Virginians with Disabilities Act and the federal Americans with Disabilities Act, shall apply to the Contractor and all Subcontractors.

(c) It is the policy of the County of Augusta that the County and its employees undertake every effort to increase the opportunity for utilization of minority-owned and woman-owned businesses in all aspects of procurement to the maximum extent feasible. Accordingly, the Contractor agrees:

i. In connection with the performance of this contract, the Contractor agrees to use his or her best effort to carry out this policy and to insure that minority-owned and woman-owned businesses shall have the maximum practicable opportunity to compete for subcontract work under this contract consistent with the efficient performance of this contract.

ii. As used in this contract the term "minority-owned business" means a business or other entity that is at least fifty-one (51) percent owned and controlled by one or more socially and economically disadvantaged person(s). For purposes of this definition, the term "control" shall mean exercising the power to make policy decisions and being actively involved in day-to-day management. Such disadvantage may arise from cultural, racial, chronic economic circumstance or background or other similar cause. Such persons include, but are not limited to, Black Americans, Hispanic Americans, Asian Americans, Eskimos, and Aleuts.

iii. As used in this contract the term “woman-owned business” means a business or other entity that is at least fifty-one (51) percent owned and controlled by one or more women. For purposes of this definition, the term “control” shall mean exercising the power to make policy decisions and being actively involved in day-to-day management.

iv. Prior to final payment, the Contractor must provide documentation regarding the actual good faith minority-owned business participation efforts undertaken in connection with the contract. In connection with the performance of this contract, “good faith efforts” shall mean those measures which were utilized to allow equitable participation of minority employees and subcontractors.

v. Contractors may rely on oral or written representations by subcontractors regarding their status as minority-owned or woman-owned business enterprises in lieu of independent investigation.

vi. Where Federal grants or monies are involved it is the policy of Augusta County, through its agents and employees, to comply with the requirements set forth in the U.S. Office of Management and Budget Circular No. A-102, uniform administrative requirements for Grants and Cooperative Agreements with State and Local Governments, as they pertain to small and minority business utilization.

5. PROHIBITION OF ALCOHOL AND OTHER DRUGS

(a) During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, 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 this chapter, 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.

(b) The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all Contractor, Subcontractor and Supplier personnel at the Site: (1) the manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and (2) the impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

6. CONTRACT COMPLETION DATE AND TIME FOR COMPLETION.

(a) The Contract Completion Date will be designated by the County in the Notice to Proceed and will be no later than the mandatory Contract Completion Date specified in the Invitation to Bid. An earlier date may be determined through the bidding process taking into account the Contractor's proposed Time for Completion.

(b) The Work must be substantially completed by the Contract Completion Date. Unless otherwise specified, the Contractor shall achieve Final Completion within thirty (30) days after the date of Substantial Completion.

(c) The Contractor, in submitting his Time for Completion, acknowledges that he has taken into consideration normal weather conditions. In addition, the Contractor recognizes that only adverse abnormal weather conditions will be considered as a basis for Change Orders. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather data from the past ten (10) years. Abnormal weather conditions means only those extremely unusual weather patterns that radically deviate from the public historical records available and that reasonably impair the progress of work. No additional compensation will be paid to the Contractor because of abnormal weather conditions; however, a Change Order modifying the Contract Completion Date based upon abnormal weather will be considered by the County in extraordinary circumstances. In order to request an extension of time due to weather, the Contractor must petition the County within seven (7) days of the completion of the calendar month during which the abnormal weather is claimed to have occurred.

(d) The Contractor represents and agrees that he has taken into account in his bid the requirements of the bid documents, local conditions, availability of materials, equipment, and labor, and any other factors which may affect the performance of the Work. The Contractor agrees and warrants that he will achieve Substantial Completion of the Work to allow the County to have Beneficial Occupancy not later than the Time for Completion or Contract Completion Date. The Contractor agrees and warrants that he will achieve Final Completion of the Work (the entire completion of all Work, including "punch list" items), not later than thirty (30) days after achieving Substantial Completion, unless otherwise agreed by the County.

(e) Early Completion of Project: Extensions of time, damages for delay, and all other matters between the County and the Contractor will be determined using the contractually required Substantial Completion date. However, the Contractor may attempt to achieve Substantial Completion on or before the Contract Completion Date. Such planned early completion shall be for the Contractor's convenience only and shall not create any additional rights of the Contractor or obligations of the County under this Contract, nor shall it change the Time for Completion or the Contract Completion Date. The Contractor shall not be required to pay damages to the County because of its failure to achieve Substantial Completion by its planned earlier date. Likewise, the County shall not pay the Contractor any additional compensation for achieving Substantial Completion early nor will the County owe the Contractor any compensation should the County, its officers, employees, or agents cause the Contractor not to achieve Substantial Completion earlier than the date required by the Contract Documents.

(f) Late Completion of Project: In the event the Contractor wishes to modify the Contract Completion Date, he must comply with Section 41: Damages for Delay; Extensions of Time.

7. CONDITIONS AT SITE

(a) The Contractor bears the risk of unforeseen difficulties with site conditions during the performance of the contract. The Contractor shall have visited the Site prior to bidding and is totally responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the Site, and the character and extent of existing improvements and work within or adjacent to the Site. Claims, which result from the Contractor's failure to do so, will be deemed waived.

(b) If, in the performance of the Contract, subsurface or latent conditions at the Site are found which are materially different from those frequently present in the County or from those indicated in the Contract Documents, the Contractor must report such conditions to the County before the conditions are disturbed. Upon such notice, or upon his own observation of such conditions, the County's Representative shall promptly propose such changes in the Contract Documents as he finds necessary to conform to the different conditions.

(c) If the Contractor, during the course of the Work, observes the existence of any material which he knows, should know, or has reason to believe is hazardous to human health, the Contractor shall promptly notify the County. The County will provide the Contractor with instructions regarding the disposition of the material. The Contractor shall not perform any Work involving the material or any Work causing the material to be less accessible prior to receipt of special instructions from the County.

8. CONTRACT SECURITY

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

(b) Alternative forms of security for payment and/or performance may be accepted in the discretion of the County.

9. SUBCONTRACTS

(a) The Contractor shall, as soon as practicable after the signing of the Contract, notify the County in writing of the names of all Subcontractors proposed for the principal parts of the Work and of such other parts as the County's Representative may direct. Where the specifications establish qualifications or criteria for Subcontractors, manufacturers, or individuals performing Work on the Project, the Contractor shall be responsible for ascertaining that those proposed meet the criteria or qualifications. The Contractor shall not employ any Subcontractor that the County may, within a reasonable time, object to as unsuitable. The County shall not direct the Contractor to contract with any particular Subcontractor unless provided in the Supplemental Conditions.

(b) The County shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor and Requests for Payment submitted by the Contractor and any other documentation submitted by the Contractor which would tend to show what amounts are due and payable by the Contractor to the Subcontractor.

(c) The Contractor shall be fully responsible to the County for all acts and omissions of his agents and employees and all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between the County and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the County to pay for or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization, except as may otherwise be required by law.

(d) The Contractor shall be fully responsible for his invitees at the Site and for those of his Subcontractors, Suppliers, and their employees, including any acts or omissions of such invitees.

(e) The Contractor agrees that he alone is responsible for all dealings with his Subcontractors and Suppliers, and their subcontractors, employees and invitees, including, but not limited to, the Subcontractors' or Suppliers' claims, demands, actions, disputes and similar matters unless specifically provided otherwise by the Contract or by statute.

10. SEPARATE CONTRACTS.

The County reserves the right to let other contracts in connection with the Project, the Work under which may proceed simultaneously with the execution of this Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work. The Contractor shall cooperate with them and shall take all reasonable action to coordinate his Work with theirs.

If the County has listed other separate contracts in the Invitation for Bids which it expects to proceed simultaneously with the Work of the Contractor, and has included the estimated timing of such other Contracts in the Invitation for Bids, the Contractor shall integrate the schedule of those separate contracts into his scheduling. The Contractor shall make every reasonable effort to assist the County in maintaining the schedule for all separate contracts. If the work performed by the separate contractor is defective or performed so as to prevent or threaten to prevent the Contractor from carrying out his Work according to the Contract, the Contractor shall immediately notify the County and the Architect/Engineer, if any, upon discovering such conditions.

If a dispute arises between the Contractor and any separate contractor(s) as to their responsibility for cleaning up as required by the "Use of Site and Removal of Debris" provisions of these General Conditions, the County may clean up and charge the cost thereof to the respective contractors in proportion to their responsibility. If a Contractor disputes the County's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.

11. INDEMNIFICATION

Except as provided in § 11-4.1 of the Code of Virginia, the Contractor agrees to indemnify, defend and hold harmless the County, its officers, agents, and employees from any claims, 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 arising from or caused by any services of any kind or nature provided by the Contractor, provided that such liability is not attributable to the sole negligence of the County or to failure of the County to use the materials, goods, or equipment in the manner already and permanently described by the Contractor on the materials, goods or equipment delivered.

12. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE

(a) The Contractor shall not commence Work under this Contract until he has obtained all the insurance required hereunder from an insurer authorized to do business in Virginia and such insurance has been approved by the County; nor shall the Contractor allow any Subcontractor to commence Work on his subcontract until the same types of insurance in an appropriate amount have been obtained by the

Subcontractor and approved by the Contractor. Approval of insurance by the County shall not relieve or decrease the liability of the Contractor hereunder.

(b) The Contractor shall take out and shall maintain at all times during the performance of the Work Workers' Compensation and Employers' Liability Insurance for all of his employees engaged in the Work in an amount not less than the minimum required by §11-46.3 and §65.2-100 et seq. of the Code of Virginia, and, in case any of the Work is sublet, the Contractor shall require each Subcontractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in the Work. The Contractor shall submit on the form provided by the County a Certificate of Coverage verifying Workers' Compensation coverage prior to award of the Contract. The Contractor shall likewise obtain a Certificate of Coverage for Workers' Compensation coverage from each subcontractor prior to awarding the subcontract and shall provide a copy to the County.

(c) During the performance of the Work under this Contract, the Contractor shall maintain commercial general liability insurance to include Premises / Operations Liability, Products and Completed Operations Coverage, Independent Contractor's Liability, County's and Contractor's Protective Liability, and Personal Injury Liability, which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of general liability insurance shall be not less than \$1,000,000 per occurrence and \$2,000,000 aggregate combined limit. The County of Augusta, its officers, employees and agents, shall be named as an additional insured with respect to the Work being procured. The Supplemental Conditions may require the Contractor to provide an Umbrella insurance policy in a specified amount for the Project.

(d) During the performance of the Work under this Contract, the Contractor shall maintain automobile liability insurance which shall insure him against claims of personal injury, including death, as well as against claims for property damage, which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor, or by anyone directly or indirectly employed by either of them. The amounts of automobile insurance shall be not less than \$1,000,000 combined limit for bodily injury and property damage per occurrence.

(e) Written evidence of all required insurance shall be delivered to the County's Representative prior to the Notice to Proceed and, in any event, no later than thirty (30) days following the award of the contract. The Contractor shall ensure that in the event of cancellation of any insurance, not less than thirty (30) days prior written notice will be sent by the Insurer to the County. A copy of any insurance policy shall be given to the County upon demand. Cancellation of any required insurance policy is a material breach of this contract.

(f) The Contractor is not required to have "all risk" builders risk insurance for this project. The County maintains insurance on the existing building (including fire, vandalism and extended coverage) which covers alterations and new construction as well as materials for the project stored on the site or immediately adjacent thereto. Upon written application from the Contractor prior to commencing the work, the County will have the Contractor named in the endorsement as his interest may appear. The Contractor, as an additional insured, shall be responsible for payment of any and all deductibles applicable to claims made while the Contractor is in control of or occupies the building for the performance of the Work under this Contract. Contractor's tools, equipment, etc., which are not materials to be incorporated in the construction are not covered by this insurance.

13. TAXES, FEES AND ASSESSMENTS

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

14. PATENTS

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

“[Section 15 Omitted.]”

16. INSPECTION

The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for by this contract conforms to the Contract requirements. The Contractor shall maintain complete inspection records and make them available to the County and the County's Representative. All work is subject to inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

17. SUPERINTENDENCE BY CONTRACTOR

(a) The Contractor shall have a competent foreman or superintendent, satisfactory to the County, on the Site at all times during the progress of the Work. The superintendent or foreman shall be familiar with and be able to read and understand the plans and specifications, and be capable of communicating orally and in writing with the County's inspectors and the Contractor's workers. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the County, in writing, of any proposed change in superintendent, including the reason therefore, prior to making such change.

(b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the

Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the County or the County's separate contractors and their subcontractors.

(c) The County may, in writing, require the Contractor to remove from the Site any employee or Subcontractor's employee the County deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable, but the County shall have no obligation to do so.

18. CONSTRUCTION SUPERVISION, METHODS AND PROCEDURES

(a) The Contractor shall be solely responsible for supervising and directing the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work under the Contract, except where otherwise specified in the Contract Documents. However, the Contractor shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract. The Contractor is solely responsible to the County that the finished Work complies with the Contract Documents.

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

(c) If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the County. The Contractor must submit in a timely manner its written request for the substitution to the County's Representative. Such request must include sufficient information to allow the County to determine that the substitute proposed is equivalent to that indicated or required by the Contract and be received by such a date to ensure the County has adequate time to review the request and respond without creating a need for an extension of the Contract Completion Date.

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

19. SCHEDULE OF THE WORK

(a) General: The Contractor is responsible for the scheduling and sequencing of the Work, for coordinating the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule.

(b) Within fifteen (15) days after the Contractor signs the Contract between County and Contractor, unless waived by the County or otherwise provided in the Supplemental Conditions, the Contractor shall prepare and submit to the County, with a copy to the A/E, a preliminary schedule for accomplishing the Work as contractually agreed. The preliminary schedule shall be in sufficient detail to show the sequencing of the various trades involved in the Work. The County will notify the Contractor of its

acceptance of or objections to the preliminary schedule within fifteen (15) days of receipt by the County. A final Project schedule for accomplishing the Work must be submitted in like manner prior to the Notice to Proceed or at such other time as may be agreed by the County.

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

(d) Failure to provide a satisfactory Project schedule within the time limits stated above shall be a breach of contract for which the County may terminate the Contract.

20. SCHEDULE OF PAYMENTS TO CONTRACTOR.

(a) Payments. The County shall pay the accepted Bidder, upon receipt of an invoice in a form acceptable to the County, in the following manner for performance of services under the Contract:

- i. All pay requests are to be submitted to the County's Representative by the 10th of the month for approval for payment due pursuant to the payment schedule through the last day of the previous month.
- ii. Approved pay requests will be paid on the 25th of each month submitted less five (5) percent retainage, if applicable, which will be paid when the construction is completed and final acceptance has been determined.
- iii. Payment schedule: Upon completion of the project by successful contractor and after satisfactory final inspection from the County and receipt of warranty from manufacturer the County will pay the Contractor's Statement of Amount Due within thirty (30) days of acceptance.

21. ACCESS TO WORK.

The County, the County's Representative, the County's inspectors and other testing personnel, inspectors from the Department of Labor and Industry, and others authorized by the County, shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

22. SURVEYS AND LAYOUT.

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

(b) Such general reference points and benchmarks on the Site as will enable the Contractor to proceed with the Work will be established in the plans and specifications. If the Contractor finds that any previously established reference points have been lost or destroyed, he shall promptly notify the County's Representative.

(c) The Contractor shall protect and preserve the established benchmarks and monuments and shall make no changes in locations without written notice to the County's Representative and the written approval from the County. Any of these which may be lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior written approval of the County, be replaced and accurately located by the Contractor.

23. PLANS AND SPECIFICATIONS.

(a) The general character and scope of the Work are illustrated by the plans and the specifications. If the Contractor deems additional detail or information to be needed, he may request the same by Field Order in writing from the County's Representative. The request shall precisely state the detail or information needed and shall explain why it is needed. The Contractor shall also indicate a date when the requested information is required.

(b) If the Contractor finds a conflict, error, or other discrepancy in the plans or specifications, he shall notify the County's Representative in writing as soon as possible, but before proceeding with the affected Work.

(c) Measurements or dimensions shown on the drawings for Site features, utilities and structures shall be verified at the Site by the Contractor. The Contractor shall not scale measurements or dimensions from the drawings. If there are discrepancies, the County's Representative shall be consulted.

(d) As-Built Drawings: The Contractor shall maintain at the Site for the County one copy of all drawings, specifications, addenda, approved shop or setting drawings, Change Orders and other modifications (collectively referred to herein as "As-Built Drawings") in good order and marked to record all changes as they occur during construction. These shall be available to the County, the Project Inspector, the County's other inspectors and to the County's testing personnel. The drawings shall be neatly and clearly marked in contrasting color during construction to record all variations made during construction. The representation of such variations shall include such supplementary notes, symbols, legends, and details as may be necessary to clearly show the as-built construction.

(e) Record Drawings: Upon completion of the Work and prior to the final inspection, the Contractor shall deliver to the County's Representative one complete set of "As-Built Drawings" referred to in the preceding subsection.

24. SUBMITTALS.

(a) The Contractor shall submit a listing of all Submittals required by the County or which the Contractor identifies as necessary, fixing the dates for the submission of shop or setting drawings, samples and product data. The listing shall be in a format acceptable to the County.

(b) Submittals shall be forwarded to the County's Representative for approval if required by the specifications or if requested by the County. No part of the Work dealt with by a Submittal shall be fabricated by the Contractor, save at his own risk, until such approval has been given.

(c) The Contractor shall furnish to the County's Representative for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the Work. When Submittals are required by this Contract for materials,

the Contractor shall furnish full information concerning the material or articles which he contemplates incorporating in the Work. When required, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval shall be at the risk of subsequent rejection.

(d) Submittals shall be accompanied by a letter of transmittal which shall list the Submittals included, the specification section number applicable to each, and the date shown on each Submittal. Submittals shall be complete in every respect and bound in sets. Each Submittal shall be clearly marked to show each item, component and/or optional feature proposed to be incorporated into the Project. Cross reference to the plans or specifications as needed to identify the use for which the item or component is intended.

(e) The Contractor shall check the Submittals for compliance with the requirements of the Contract Documents. The Contractor shall clearly note in writing any and all items which deviate from the requirements of the Contract Documents. Reasons for deviation shall be included with the Submittal.

(f) The Contractor shall forward all Submittals sufficiently in advance of construction requirements to allow reasonable time for checking, correcting, resubmitting and rechecking.

(g) If a Submittal indicates a departure from the Contract requirements, the County may approve or reject the Submittal as the County, in its sole discretion, sees fit. The departure from the Contract requirements shall be further authorized by a Change Order, if a reduction or increase in the Contract Price is appropriate.

(h) The Contractor shall verify that the Submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in Submittals are of the quality specified and will function properly, and that the Submittals comply with the Contract Documents.

25. FEES, SERVICES AND FACILITIES

(a) The Contractor shall obtain all permits, and shall pay for all fees and charges, including, but not necessarily limited to, fees necessary for temporary access and public right-of-way blockage or use, for use of landfill and other waste disposal facilities, for temporary connections to utilities, and for the use of property (other than the Site) for storage of materials and other purposes unless otherwise specifically stated in the Contract Documents.

(b) Certain projects such as renovations and interior modifications of existing buildings will usually have water and electric service to the building. In those instances, water and electric power, if required for the Work under the Contract, will be furnished by the County subject to reasonable use by the Contractor, only to the extent and capacity of present services. The Contractor shall be responsible for providing required connections, temporary wiring, piping, etc. to these services in a safe manner and in accordance with applicable codes. All temporary wire, pipe, etc. shall be removed before the Substantial Completion inspection. Acceptance by the Contractor of the use of County's water and electricity constitutes a release to the County of all claims and of all liability to the Contractor for whatever damages which may result from power and water outages or voltage variations.

(c) The County shall pay any connection charges for permanent utility connections directly to the utility Supplier. The Contractor shall coordinate such connections with the utility Supplier.

(d) It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor, either directly or through his Subcontractors, shall provide and pay for all material, labor, tools, equipment, water, light, power, telephone and other services or facilities of every nature whatsoever necessary to execute completely and deliver the Work within the Contract Time for Completion or before the Contract Completion Date.

26. EQUALS.

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

(b) Equal materials, equipment or assemblies: Whenever in these Contract Documents, a particular brand, make of material, device or equipment is shown or specified, such brand, make of material, device or equipment shall be regarded merely as a standard. Any other brand, make or manufacturer of a product, assembly or equipment which in the opinion of the County is the equal of that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work, and suitability for the intended purpose, will be accepted unless rejected by the County as not being equal.

(c) Substitute materials, equipment or assemblies: The Contractor may propose to substitute a material, product, equipment, or assembly which deviates from the requirements of the Contract Documents but which the Contractor deems will perform the same function and have equal capabilities, service life, economy of operations, and suitability for the intended purpose. The proposal must include any cost differentials proposed. If the proposed substitute is acceptable to the County, a Change Order will be proposed to the Contractor to accept the substitute and to deduct the proposed cost savings from the Contract Price. The County shall have the right to limit or reject substitutions at its sole discretion as provided in Virginia Code § 2.2-4315.

(d) The Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equal or substitute product which it uses. The necessary changes shall be made at the Contractor's expense.

27. AVAILABILITY OF MATERIALS.

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

28. CONTRACTOR'S TITLE TO MATERIALS.

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

29. STANDARDS FOR MATERIALS INSTALLATION & WORKMANSHIP.

(a) Unless otherwise specifically provided in the Contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition.

(b) Unless specifically approved by the County or required by the Contract, the Contractor shall not incorporate into the Work any materials containing asbestos or any material known by the industry to be hazardous to the health of building construction workers, maintenance workers, or occupants. If the Contractor becomes aware that a material required by the Contract contains asbestos or other hazardous materials, he shall notify the County's Representative immediately and shall take no further steps to acquire or install any such material without first obtaining County approval.

(c) All workmanship shall be of the highest quality found in the construction industry in every respect. All items of Work shall be done by craftsmen or tradesmen skilled in the particular task or activity to which they are assigned. In the acceptance or rejection of Work, no allowance will be made for lack of skill on the part of workmen. Poor or inferior workmanship (as determined by the County or other inspecting authorities) shall be removed and replaced at Contractor's expense such that the Work conforms to the highest quality standards of the trades concerned, or otherwise corrected to the satisfaction of the County, or other inspecting authority, as applicable.

(d) Under the various sections of the plans or specifications, where specified items are supplied with the manufacturer's printed instructions, recommendations, or directions for installation, or where such instructions, recommendations, or directions are available, installation of the specified items shall be in strict accordance with the manufacturer's printed instructions unless those instructions contradict the plans or specifications, in which case the County's Representative will be notified for an interpretation and decision.

(e) Under the various sections of the plans or specifications, where reference is made to specific codes or standards governing the installation of specified items, installation shall in all cases be in strict accordance with the referenced codes and standards. Where no reference is made to specific codes or standards, installation shall conform to the generally recognized applicable standards for first-class installation of the specific item to be installed. Contractors are expected to be proficient and skilled in their respective trades and knowledgeable of the Codes and Standards of the National Fire Protection Association (NFPA), National Electric Code (NEC), Occupational Safety and Health Act (OSHA) and other codes and standards applicable to installations and associated work by his trade.

(f) Where the manufacturer's printed instructions are not available for installation of specific items, where specific codes or standards are not referenced to govern the installation or specific items, or where there is uncertainty on the part of the Contractor concerning the installation procedures to be followed or the quality of workmanship to be maintained in the installation of specific items, the Contractor shall consult the County's Representative for approval of the installation procedures or the specific standards governing the quality of workmanship the Contractor proposes to follow or maintain during the installation of the items in question.

(g) During and/or at the completion of installation of any items, the tests designated in the plans or specifications necessary to assure proper and satisfactory functioning for its intended purpose shall be performed by the Contractor or by its Subcontractor responsible for the completed installation. All costs for such testing are to be included in the Contract Price. If required by the Contract Documents, the Contractor shall furnish prior to final inspection the manufacturers' certificates evidencing that products meet or exceed applicable performance, warranty and other requirements, and certificates that products have been properly installed and tested.

30. WARRANTY OF MATERIALS AND WORKMANSHIP.

(a) The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with the Contract Documents and shall be performed by persons qualified at their respective trades.

(b) Work not conforming to these warranties shall be considered defective.

(c) This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in the Contract or under Virginia law.

(d) The Contractor shall ensure that all manufacturer's warranties and similar guarantees are properly extended to the County and that documents evidencing the same are submitted to the County's Representative prior to final inspection.

31. USE OF SITE AND REMOVAL OF DEBRIS.

(a) The Contractor shall:

(1) Perform the Work in such a manner as not to interrupt or interfere with the operation of any existing activity on, or in proximity to, the Site or with the Work of any other separate contractor;

(2) Store his apparatus, materials, supplies and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of his Work or the work of any other separate contractor; and

(3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.

(b) The Contractor expressly undertakes, either directly or through his Subcontractor(s), to effect all cutting, filling or patching of the Work required to make the same conform to the plans and specifications, and, except with the consent of the County's Representative, not to cut or otherwise alter the Work of any other separate contractor. The Contractor shall not damage or endanger any portion of the Work or Site, including existing improvements, unless called for by the Contract.

(c) The Contractor expressly undertakes, either directly or through his Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the Site shall present a neat, orderly and workmanlike appearance. No such refuse, rubbish, scrap material and debris shall be left within the completed Work nor buried on the building Site, but shall be removed from the Site and properly disposed of in the County landfill or otherwise as required by law. The Contractor shall be responsible for the payment of all applicable tipping fees or other disposal fees at any landfill or other waste disposal facility.

(d) The Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment or such prior time as the County may require, to remove all surplus material, false Work, temporary structures, including foundations thereof, plants of any description and debris of every nature

resulting from his operations and to put the Site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to clean thoroughly all glass installed under the Contract, including the removal of all paint and mortar splatters and other defacements. If the Contractor fails to clean up at the time required herein, the County may do so and charge the costs incurred thereby to the Contractor.

(e) The Contractor shall prevent Site soil erosion, the runoff of silt and/or debris carrying water from the Site, and the blowing of dust or debris off the Site in accordance with the applicable requirements and standards of the Contract and the County's Erosion and Sediment Control and Stormwater Management Regulations.

32. TEMPORARY ROADS.

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

33. SIGNS.

The Contractor may not, without the prior written consent of the County, erect signs at or near the Site. Signs required by law, such as the posting of building permits, are allowed. No signs shall be erected without prior approval of the County as to purpose, design and location.

34. PROTECTION OF PERSONS AND PROPERTY.

(a) The Contractor expressly undertakes both directly and through his Subcontractors, to take every reasonable precaution at all times for the protection of all persons and property which may come on the Site or be affected by the Contractor's Work.

(b) The Contractor shall be solely responsible for providing on site all necessary safety equipment and supplies and for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.

(c) The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect the County's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except as may be directly and solely due to errors in the Contract Documents or caused by agents or employees of the County. The Contractor shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection as required by public authority, local conditions, or the Contract.

(d) In an emergency affecting the health, safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the County, shall act, at his discretion, to prevent such threatened loss or injury. Also, should he, to prevent threatened loss or injury, be instructed or authorized to act by the County, he shall so act immediately, without appeal.

(f) When necessary for the proper protection of the Work, temporary climate control of a type approved by the County must be provided by the Contractor, at the Contractor's expense, unless otherwise specified.

35. CLIMATIC CONDITIONS.

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

“[Section 36 Omitted.]”

37. PAYMENTS BY CONTRACTOR

Under Virginia Code § 2.2-4354:

(a) The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the contractor by the County for work performed by subcontractors under that contract:

(1) Pay subcontractors for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractors under that contract; or

(2) Notify the County and subcontractor, in writing, of his intention to withhold all or a part of any subcontractor's payment with the reason for nonpayment.

(b) Individual Contractors are required to provide their social security numbers; and proprietorships, partnerships, and corporations are required to provide their federal employer identification numbers.

(c) The Contractor is obligated to pay interest to a subcontractor on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision a.

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

(e) The Contractor is further required to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

(f) The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the County. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

38. CHANGES IN THE WORK.

(a) Requests for Change Orders may be initiated by any party at any time. The County may, by written Change Order and without notice to the sureties, approve changes in the Work which are within the general scope of the Contract. However, no change will be made which will increase the total Contract Price to an amount more than twenty percent (20%) in excess of the original Contract Price without notice to sureties.

(b) In making any change, the charge or credit for the change shall be determined by a mutually agreed fixed amount change to the Contract Price and/or time allowed for completion of the Work. The following procedure shall be followed:

(1) The party receiving the proposed change shall review the proposed change and shall respond in writing within fourteen (14) days after receipt of the proposed change, stating the effect of the proposed change upon the Work, including any increase or decrease in the Contract time and Price.

(2) The Contractor shall furnish to the County an itemized breakdown of the quantities and prices used in computing the proposed change in Contract Price.

(3) The County shall review the Contractor's proposed price and respond to the Contractor within thirty (30) days of receipt. If a change to the Contract Price and time for performance are agreed upon, both parties shall sign the Change Order. Changes to the Contract time and/or Price shall be effective when signed by both parties.

(4) Change Order shall be substantiated by documentation itemizing the estimated quantities and costs of all labor, materials and equipment required as well as any mark-up used. The price change shall include the Contractor's overhead and profit.

(5) All Change Orders must state that the Contract Time for Completion or Contract Completion Date is not changed or is either increased or decreased by a specific number of days. The old Time for Completion and, if changed, the new Time for Completion must be stated.

(6) If the parties are unable to agree on the terms of a Change Order, the matters in dispute shall be resolved as provided in § 47 of these General Conditions unless an alternative procedure is set forth in the Supplemental Conditions.

39. EXTRAS.

If the Contractor claims that any instructions given to him by the County, by drawings or otherwise, involve extra Work which increases the scope of the Contract, then, except in emergencies endangering life or property, he shall give the County written notice thereof before proceeding to execute the Work. Said notice shall be given promptly enough to avoid delaying the Work and in no instance later than fourteen (14) days after the receipt of such instructions. Should it not be immediately clear to the Contractor that the change involves extra Work outside the scope of the Contract, written notice shall be sufficient if given as soon as possible after such realization, but in no event later than fourteen (14) days after the start of such Work. If the County agrees, a Change Order shall be issued as provided in Section 38 of these General Conditions, and any additional compensation shall be determined as provided in said Section. Except as otherwise specifically provided, no claims for extra Work shall be allowed unless

timely notice, as required by this Section, is given by the Contractor and unless such Work is performed pursuant to written Change Order as provided in Section 38.

40. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT.

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

41. COUNTY'S RIGHT TO TERMINATE THE CONTRACT FOR CAUSE.

(a) If the Contractor should be adjudged as bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, the County may terminate the Contract. If the Contractor should refuse or should repeatedly fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials and equipment, or if he should fail to make prompt payment to Subcontractors or Suppliers of material or labor, or if he should disregard laws, ordinances or the written instructions of the County, or otherwise be in substantial violation of any provision of the Contract, then the County may terminate the Contract.

(b) Prior to termination of the Contract, the County shall give the Contractor and his surety ten (10) days written notice pursuant to Section 1 ("Notice") of these General Conditions, during which the Contractor and/or his surety may rectify the basis for the notice. If rectified to the satisfaction of the County within said ten (10) days, the County may rescind its notice of termination. If not, the termination for cause shall become effective at the end of the ten (10) day notice period. In the alternative, the County may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the basis for the termination will be remedied in a time and manner which the County finds acceptable. If at any time after such postponement, the County determines that Contractor and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or within the time allowed, then the County may immediately terminate the Contract for cause, without the necessity of further ten (10) day notice, by notifying the Contractor and his surety in writing of the termination. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

(c) Upon termination of the Contract, the County shall take possession of the Site and of all materials, tools and equipment thereon and finish the Work by whatever method he may deem expedient. In such case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price, the Contractor shall pay the difference to the County, together with any other expenses of terminating the Contract and having it completed by others.

(d) If it should be judicially determined that the County improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the County.

(e) Termination of the Contract under this Section is without prejudice to any other right or remedy of the County.

42. TERMINATION BY COUNTY FOR CONVENIENCE.

(a) County may terminate this Contract, in whole or in part, at any time without cause upon giving the Contractor written notice of such termination pursuant to Section 1 ("Notice") of these General Conditions. Upon such termination, the Contractor shall immediately cease Work and remove from the Site all of its labor forces and such of its materials as County elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as County may require to assign to the County the Contractor's interest in all Subcontracts and purchase orders designated by County. After all such steps have been taken to County's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

(1) All amounts then otherwise due under the terms of this Contract based upon approved Requests for payment.

(2) Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Request for Payment through the date of termination.

(3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination.

The Contractor shall not be entitled to any compensation or damages for lost profits or for any other type of contractual compensation or damages other than those provided by this section. Upon payment of the foregoing, County shall have no further obligations to Contractor of any nature.

(b) In the event the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this section, the County shall pay the amounts, as determined by the County's Representative, as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this section:

(1) All amounts then otherwise due under the terms of this Contract based upon approved Requests for payment.

(2) Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Request for Payment through the date of termination, which shall be the total of:

(a) cost of work performed or supplies delivered;

(b) the costs of settling and paying any reasonable claims to subcontractors and suppliers; and

(c) a mark-up of ten percent (10%) for profit and overhead.

(3) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination.

The total sum to be paid shall not exceed the contract price, as reduced by the amount of payments otherwise made, and as further reduced by the contract price of work not done or supplies not delivered. If there is evidence that the Contractor would have sustained a loss on the entire Project had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

(c) In the event the Contractor is not satisfied with any payments which the County's Representative shall determine to be due under this section, the Contractor may proceed in accordance with Section 47, "Contractual Disputes."

(d) In no event shall termination for the convenience of the County terminate the obligations of the Contractor's surety on its payment and performance bonds.

43. DAMAGES FOR DELAYS; EXTENSION OF TIME

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

(b) If the Contractor is delayed at any time in the progress of the Work by any act or omission of the County, its agents or employees, due to causes within their control, or delayed by the County's separate, independent contractors, when such delay results from causes within the County's control, and the Contractor intends to seek additional compensation for damages, if any, caused by the delay, the Contractor shall inform the County and the A/E immediately at the time of the occurrence giving rise to the delay by the fastest means available and shall give written notice no later than two (2) working days after inception of the delay. The Contractor's notice to the County shall specify the nature of the delay claimed by the Contractor, the cause of the delay and the impact of the delay on the Contractor's Work schedule. The County shall then have three (3) working days to respond to the Contractor's notice with a resolution, remedy or direction to alleviate the delay or with a notice rejecting the claim for delay alleged to be caused by the County or parties for whom the County is responsible. If the issue is not then resolved, the Contractor may submit a request for Change Order in accordance with Section 36 or submit a claim as provided for in Section 45. The Contractor shall only be entitled to additional compensation if the delay was unreasonable and was caused solely by acts or omissions of the County, its agents or employees, due to causes within their control, or was caused by the County's separate, independent contractor, when such delay resulted solely from causes within the County's control.

(c) The Contractor shall not be entitled to an extension of the Time for Completion or Contract Completion Date or to any additional compensation for delays caused by acts or omissions of the Contractor due to causes within his control, including, but not limited to, delays resulting from Defective Work including workmanship and/or materials, from rejected work which must be corrected before dependent work can proceed, from Defective Work or rejected work for which corrective action must be determined before like work can proceed, or from incomplete, incorrect or unacceptable Submittals or samples.

(d) No extension of time or additional compensation, if applicable, will be granted for any delay unless the claimed delay directly affects the critical path of the approved CPM schedule or the schedule shown on the approved bar graph schedule, whichever is applicable, and any float has been consumed. No extension of time or additional compensation shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed in Subsections (a) or (b) above, whichever applies. Furthermore, no extension of time or additional compensation shall be given for any delay unless a claim therefore is made in writing to the County, with a copy to the A/E, within twenty (20) days of the end of the delay. The claim shall state the cause of the delay, the number of days of extension requested and any compensation requested by the Contractor. The Contractor shall report the termination of the delay to the County and A/E not less than ten (10) days after such termination. Failure to give notice of either the inception or the termination of the cause of delay or failure to present a claim for extension of time and/or monetary compensation within the times prescribed shall constitute a waiver of any claim for extension or additional compensation based upon that cause.

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

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

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

(f) If the Contractor submits a claim for delay damages, the Contractor shall be liable to the County for a percentage of all costs incurred by the County in investigating, analyzing, negotiating and litigating the claim, which percentage shall be equal to the percentage of the Contractor's total delay claim which is determined through litigation to be false or to have no basis in law or in fact.

(g) Any change in the Contract Time for Completion or Contract Completion Date shall be accomplished only by issuance of a Change Order.

(h) If the Contractor fails to complete the Work within the Time for Completion or the Contract Completion Date, the Contractor shall be liable to the County in the amounts set forth in subsection (j) below not as a penalty, but as fixed, agreed and liquidated damages for any and all actual damages sustained as a result of delay until the Work is substantially or finally completed as the case may be. In addition to damages for delay, the Contractor shall also be liable for any and all actual damages sustained by the County as a result of any other breach of the Contract, including, but not limited to, Defective Work and abandonment of the Contract.

(i) Time is of the essence of the contract.

(j) Completion of the Work, for purposes of this section, shall occur upon preliminary acceptance of all the Work required by the contract documents. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended by Change Order, shall in no way operate as a waiver on the part of the County of any of its rights under the Contract.

44. INSPECTION FOR SUBSTANTIAL COMPLETION & FINAL COMPLETION

(a) The Contractor shall notify the County, in writing by "Certificate of Partial or Substantial Completion," of the date when the Work or designated portion thereof, will be, in his opinion, substantially complete and ready for inspection and testing to determine if it has reached Substantial Completion. The notice shall be given at least ten (10) days in advance of said date. Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor and County.

The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the project function properly and in accordance with the Contract Documents. The Contractor shall furnish access for the inspection and testing. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in either: (a) a written notice that the County does not consider the Work to be substantially complete accompanied by a written list of unfinished Work and Defective Work which must be completed or corrected before the County will concur that the Work is substantially complete, or (b) a written confirmation by the County that the Work is substantially complete accompanied by a written list of unfinished Work and Defective Work, commonly referred to as a "punch list", which must be finished and corrected to obtain Final Completion. If the County has not concurred that the Work is substantially complete, the Contractor shall provide the County another Certificate of Partial or Substantial Completion notifying the County of the date when, in his opinion, the listed items of unfinished Work or Defective Work will be substantially complete and ready for inspection.

(b) The Contractor shall notify the County, in writing, of the date when the Work will reach Final Completion and will be ready for final inspection and testing. The notice shall be given at least five (5) days in advance of said date. That inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. When the Work is finally and totally complete, including the elimination of all defects, the Work shall be finally accepted by the County and final payment shall be made in accordance with these General Conditions.

(c) The County's Representative shall conduct the inspections. The County may elect to have other persons of its choosing also participate in the inspections. If one or more Substantial or Final Completion re-inspections are required, the Contractor shall reimburse the County for all costs of re-inspection or, at the County's option, the costs may be deducted from payments due to the Contractor.

(d) Approval of Work at or as a result of any inspection required herein shall not release the Contractor or his surety from responsibility for complying with the Contract.

45. GUARANTEE OF WORK.

(a) Except as otherwise specified, all Work shall be, and is hereby, guaranteed by the Contractor against defects resulting from the use of materials, equipment or workmanship, which are defective, inferior, or not in accordance with the terms of the Contract, for one (1) year from the date of Final Completion of the entire Project by the County. Equipment and facilities which have seasonal limitations on their operation (e.g. heating or air conditioning units) shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the County. Where the County agrees to take Beneficial Occupancy of a portion or phase of the Work which has been determined to be substantially complete before the entire Work is finally completed, the guarantees for the materials, equipment and workmanship in that portion or phase shall begin on the date that the County takes Beneficial Occupancy, unless otherwise specified in the Supplemental Conditions or by separate agreement.

(b) If, within any guarantee period, Work which is not in accordance with the Contract, Defective Work, or inferior material, equipment or workmanship is noted by the County which requires or renders necessary repairs or changes in connection with the guaranteed Work, the Contractor shall, promptly upon receipt of notice from the County, such notice being given not later than two (2) weeks after the guarantee period expires, and without expense to the County:

(1) Place in satisfactory condition in every particular all of such guaranteed Work and correct all defects, inferior materials, equipment or workmanship therein;

(2) Make good all damage to the structure or Site or equipment or contents thereof, which, in the opinion of the County, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract; and

(3) Make good any Work or materials or the equipment and contents of structures and/or Site disturbance that results from fulfilling the provisions of this Section.

(c) In any case, when in fulfilling the requirements of the Contract and this guarantee or any other guaranty or warranty, the Contractor disturbs any work performed by a separate contractor, he shall restore such work to a condition satisfactory to the County and guarantee such restored work to the same extent as if it was guaranteed under this Contract.

(d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee as set forth in this Section, the County may have the defects or inferior materials, equipment or workmanship corrected and the Contractor and his surety shall be liable for all expense incurred.

(e) All special warranties and guarantees applicable to definite parts of the Work that may be stipulated in or required by the Contract Documents shall be subject to the terms of this Section during the first year of the life of such special warranty or guarantee.

(f) The guarantee of this Section shall be in addition to and not in lieu of all other warranties, express or implied, applicable to or arising from this Contract or by law.

(g) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for Defective Work. This Section relates only to the specific obligation of the Contractor as set forth in this Section to correct the Work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under the Contract Documents.

(h) In the event the Work of the Contractor is to be modified by another contractor, either before or after the Final Inspection, the first Contractor shall remain responsible in all respects under this Section's Guarantee of Work and under any other warranties or guarantees, express or implied, applicable to or arising from this Contract or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying his Work. The first Contractor and the contractor making the modifications shall each be solely responsible for his respective work. The contractor modifying the earlier Work shall be responsible for any damage to or defect introduced into the Work by his modification. If the first contractor claims that a subsequent contractor has introduced defects of materials and/or workmanship into his Work, it shall be the burden of the contractor making the claim to demonstrate clearly the nature and extent of such introduced defects and the other contractor's responsibility for those defects. Any contractor modifying the work of another shall have the same burden if he asserts that defects in his work were caused by the contractor whose work he is modifying.

46. ASSIGNMENTS.

Neither party to the Contract shall assign the Contract in whole or any part without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the prior written consent of the County. No assignment shall relieve any party from its obligations under the Contract.

47. CONTRACTUAL DISPUTES.

(Virginia Code § 2.2-4363)

(a) Contractual claims, whether for money or for other relief, shall be submitted, in writing, no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given at the time of the occurrence or beginning of the Work upon which the claim is based. The filing of a timely notice is a prerequisite to recovery under this Section. Although the Contractor may be required to submit certain classes of claims prior to final payment, and the Contractor is not prevented from filing claims during the pendency of the Work, the County shall not be obligated

to render a final written decision on any claim until after final payment. All claims shall be submitted along with all practically available supporting evidence and documentation.

(b) No written decision denying a claim or addressing issues related to the claim, if rendered prior to final payment, shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the County. The Contractor may not institute legal action prior to receipt of the County's final written decision on the claim unless the County fails to render such a decision within ninety (90) days of submission of the claim or within ninety (90) days of final payment, whichever is later.

(c) The decision of the County shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in § 2.2-4364 of the Code of Virginia. Failure of the County to render a decision within 90 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the County's failure to render a decision within 90 days shall be the Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4364 of the Code of Virginia has been established for contractual claims under this Contract.

48. ASBESTOS.

The Contractor, if not licensed as an asbestos abatement contractor in accordance with § 54.1-514 of the Code of Virginia, shall have all asbestos-related Work performed by subcontractors who are duly licensed as asbestos contractors for the Work required.

The Contractor shall assure that the asbestos abatement work is accomplished by those duly licensed and in accordance with the specific requirements of the Contract and all applicable laws and regulations.

The licensed asbestos Subcontractor shall provide occurrence-based liability insurance with asbestos coverages in the amount not less than \$1,000,000 and shall name the following additional insureds: The County, its officers, employees and agents; the A/E; and the Contractor.

49. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT.

(a) As a part of the Work, the Contractor in conjunction with his Subcontractors and Suppliers shall provide the County's operations and maintenance personnel with adequate instruction and training in the proper operation and maintenance of any equipment, systems, and related controls provided or altered in the Work. The training requirements may be further defined in the Contract Documents.

(b) The Contractor shall provide the County with a minimum of two (2) copies of operating, maintenance and parts manuals for all equipment and systems provided in the Work. Further specific requirements may be indicated in the Contract Documents.

50. PROJECT MEETINGS.

The intention of this section is to enable the County and the Contractor to have a timely exchange of information and to accomplish the Work in a cooperative manner as required by the Contract Documents. The Contractor is responsible for managing the Work, obtaining approvals and

requesting clarifications on a timely, reasonable basis. The County is responsible for making a reasonable effort to provide timely responses to the Contractor.

Preconstruction Meeting:

(a) Prior to the start of construction, a "Pre-construction" meeting shall be held. In attendance should be: (a) the County's Representative and Project Inspector, if any; (b) when appropriate, representatives of each design discipline involved in the Project; (c) the Contractor's Representative and superintendent and, representatives of the Contractor's major Subcontractors, if any; and (d) such other persons either the County or the Contractor may invite. No decisions made at this meeting shall be binding unless appropriate Field Orders or Change Orders are issued. This meeting is to exchange certain information and to clarify and discuss various topics, including but not necessarily limited to, the following:

(1) Persons involved from each entity and their chain of authority including the names of persons authorized to sign Change Orders and any limits to their authority.

(2) Names, addresses, telephone numbers and FAX numbers to be used for requests for information or clarification, requests for Change Orders, and distribution of shop drawings, Submittals, and notices.

(3) Contractor's proposed construction schedule and County's sequencing requirements, if any.

(4) Procedures for submission of shop drawings, product data and other Submittals, if any.

(5) Procedures for handling Field Orders and Change Orders, if any.

(6) Procedures for Contractor's request for time extension, if any.

(7) Construction Site requirements, procedures and clarifications to the manner of conducting the Work Site specialties, including: dust, erosion control, stormwater management, project signs, clean up and housekeeping, temporary facilities, utilities, security, traffic, and safety layout.

(8) Quality control, testing, inspections, notices required, the tentative schedule of Site visits by the County's Representative and others, and any proposed changes to the Project Inspector's duties

(9) Creation, maintenance and distribution of project records.

(10) Procedures for submission of Requests for Payment.

Project Meetings and Progress Reports:

(b) Attendance at Project Meetings: Unless stated otherwise in the Supplemental Conditions, project meetings will be scheduled at least once a month. Invitees to all project meetings shall include representatives from the Contractor and the County. When appropriate, representatives of subcontractors

should also be present. Under no circumstances shall project meetings be considered a reason for extensions of time or damages for delay.

(c) Purpose of Project Meetings: The purpose of project meetings shall be to facilitate the timely exchange of information and cooperate to accomplish the Work as required by the Contract Documents. The meeting is an opportunity to discuss status and workmanship of Work in progress, pending requests for payment, compliance with construction schedule, requests for clarification, pending Change Orders, running punch list items, and potential problems which need attention. No decisions made at this meeting shall be binding unless appropriate Field Orders or Change Orders are issued.

(d) Progress Reports: The first item to be discussed at a project meeting will normally be the presentation of a progress report by the Contractor. Written progress reports may be required by the Supplemental conditions. The Contractor shall review progress not less than each month, but as often as necessary to properly manage the Project and stay on schedule. The Contractor shall collect and preserve information on Change Orders, including extensions of time. The Contractor shall evaluate this information and update the latest accepted schedule as often as necessary to finish before the Contract Completion Date.

(e) Performance Delay: If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor must indicate in writing in his progress report what measures he is taking and plans to take to bring each such element back on schedule and to ensure that the Contract Completion Date is not exceeded. Should any of the following conditions exist, the County may require the Contractor to prepare, at no extra cost to the County, a plan of action and a recovery schedule for completing the Work by the Contract Completion Date:

(1) The Contractor's progress report(s) indicates delays that are, in the opinion of the County, of sufficient magnitude that the Contractor's ability to complete the Work on time is brought into question;

(2) The Contractor's progress report(s) indicates delays that are, in the opinion of the County, of sufficient magnitude to put the Contractor thirty (30) or more days behind at any time during construction.

(3) The Contractor desires to make changes in the sequencing of Work or the planned duration of future activities which, in the opinion of the County, are of a major nature.

The plan of action, when required, shall explain and display how the Contractor intends to regain compliance with the accepted Contract Completion Date, as updated by approved Change Orders. It shall be submitted to the County for review within five (5) business days of the Contractor receiving the County's written demand.

Attachment D

AUGUSTA COUNTY, VIRGINIA

Instruction to Bidders (Offerors)

1. CONDITIONS AT SITE OR STRUCTURE: Offerors shall visit the site and shall be responsible for ascertaining pertinent local conditions such as location, accessibility, general character of the site or building, and the character and extent of existing work within or adjacent to the site. Claims, as a result of failure to have done so, will not be considered by the County.

2. EXPLANATIONS TO OFFERORS: No oral explanation in regard to the meaning of drawings and specifications will be made and no oral instructions will be given before the award of the contract and after the mandatory pre-proposal meeting. Discrepancies, omissions or doubts as to the meaning of any RFP document, drawings or specifications shall be communicated in writing to the designated Proposal Officer for interpretation. Any interpretation made will be in the form of an addendum to the RFP which will be forwarded to all Offerors, and its receipt shall be acknowledged by the Offeror on the Proposal Form.

3. TIME FOR COMPLETION:

(a) The Contract Completion Date will be designated by the County in the Notice to Proceed in one of the following manners:

(1) If the County specified a mandatory Contract Completion Date in the Invitation to Proposal, the date designated in the Notice to Proceed will be no later than that date, or

(2) If a mandatory Contract Completion Date was absent from the Invitation to Proposal, the Contract Completion Date designated in the Notice to Proceed will be determined through the proposal process taking into account the Contractor's proposed Time for Completion.

(b) Unless otherwise specified, the Contractor shall achieve Final Completion within thirty (30) days after the date of Substantial Completion.

(c) The Contractor, in preparing and submitting his proposal, is required to take into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather conditions which might be anticipated (*i.e.*, conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available for the Augusta County area, including the U.S. Department of Commerce, Local Climatological Data Sheets, Oceanic and Atmospheric Administration/Environmental Data and Information Service, National Climatic Center and the National Weather Service. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will be considered by the County as indicated in the General Conditions.

4. PREPARATION AND SUBMISSION OF PROPOSALS:

(a) Proposals shall be submitted on the forms furnished, or copies thereof, and shall be signed in ink. Erasures or other changes in a proposal must be explained or noted over the signature of the

offeror. Proposals containing any conditions, omissions, unexplained erasures, alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the County as being incomplete or non-responsive.

- (b) Each proposal must give the complete legal name and full business address of the Offeror and be signed by the Offeror, or the Offeror's authorized representative, with his usual signature. Proposals by partnerships must be signed in the partnership name by one of the general partners of the partnership or an authorized representative, followed by the designation/title of the person signing, and a list of the partners. Proposals by corporations must be signed with the legal name of the corporation followed by the name of the state in which it is incorporated and by the signature and title of the person authorized to bind it in this matter. The name of each person signing shall be typed or printed below the signature. A signature on a proposal by a person who identified his title as "President," "Secretary," "Agent," or other designation without disclosing the principal firm, shall be held to be the proposal of the individual signing. When requested by the County, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished. Trade or fictitious names may be referenced by using "t/a _____," but proposals shall be in the legal name of the person or entity submitting the proposal.
- (c) Proposals with the proposal guarantee shall be enclosed in a sealed envelope which shall be marked and addressed as indicated by the advertisement. If a contract is for one hundred twenty thousand dollars (\$120,000) or more, or if the total value of all construction, removal, repair or improvements undertaken by the offeror within any twelve-month period is seven hundred fifty thousand dollars (\$750,000) or more, the offeror is required under Title 54.1, Chapter 11, Code of Virginia (1950), as amended, to be licensed in Virginia as a "Class A Contractor." If a contract is for seven thousand five hundred dollars (\$7,500) or more, but less than one hundred twenty thousand dollars (\$120,000), the offeror is required to be licensed in Virginia as a "Class B Contractor." The offeror shall place on the outside of the envelope containing the proposal and shall place in the proposal over his signature whichever of the following notations is appropriate and insert his Contractor license/registration number:

Licensed Class ____ (A or B) Virginia Contractor No. _____

If the offeror fails to provide this information on his proposal or on the envelope containing the proposal and fails to promptly provide said Contractor license number to the County in writing when requested to do so before or after the opening of proposals, he shall be deemed to be in violation of Section 54.1-1112 of the Code of Virginia (1950), as amended, and his proposal will not be considered.

- (d) The Board for Contractors has interpreted its regulations to mean "a licensed Contractor can proposal on a contract which contains work outside his license classification(s) as long as he subcontracts those items for which he is not qualified to perform to licensed contractors with the appropriate License Classification and the work of the second party is incidental to the contract." Therefore, the County may, as a part of determining whether the Offeror is "responsible," require the apparent low Offeror to submit a listing of his subcontractors along with the license number and classification or specialty of each.

- (e) The offeror must also place its Employer Identification Number (SSN or EIN) in the space provided at the bottom of the Proposal Form.

5. PROPOSAL GUARANTEE:

- (a) All construction proposals (including the Total Base Proposal plus all Additive Proposal items) shall be accompanied by a Proposal Bond or Certified Check payable to the County as obligee in an amount equal to five percent (5%) of the amount of the proposal. A Proposal Bond must be issued by a surety company which is legally authorized by the Virginia State Corporation Commission to do fidelity and surety business in the Commonwealth of Virginia. Such Proposal Bond shall guarantee that the offeror will not withdraw his proposal during the period of thirty (30) days following the opening of proposals; that if his proposal is accepted, he will enter into a formal contract with the County in accordance with the Contract included as a part of the RFP Documents; that he will submit a properly executed and authorized Standard Performance Bond and Standard Labor and Material Payment Bond acceptable in form and content to the County; and that in the event of the withdrawal of said proposal within said period, or failure to enter into said contract and give said bonds within ten (10) days after he has received notice of acceptance of his proposal, the offeror shall be liable to the County for the difference between the amount specified in said proposal and such larger amount of which the County may contract with another party to perform the work covered by said proposal, up to the amount of the proposal guarantee. This amount represents the damage to the County on account of the default of the offeror in any particular hereof. *See Virginia Code § 2.2-4336.*
- (b) *See Virginia Code § 2.2-4338* for provisions allowing alternative forms of proposal security in lieu of a Proposal Bond.
- (c) The Proposal Bonds or other proposal security will be returned to all except the three lowest offerors after the formal opening of proposals. The remaining Proposal Bonds or proposal security will be returned to the Offerors after the County and the accepted Offeror have executed the Contract and the Performance Bond and the Payment Bond have been approved by the County.
- (d) If the required Contract and bonds have not been executed within thirty (30) days after the date of the opening of the proposals, then the bond or other proposal security of any Offeror will be returned upon his request, provided he has not been notified of the acceptance of his proposal prior to the date of such request.

6. MODIFICATION OF PROPOSALS: An offeror may withdraw or modify their proposal provided that the designated officer or agency of the county has received written notice prior to the deadline fixed for proposal receipt. The withdrawal or modification must be signed again by the authorized representative of the contractor making the modification or withdrawal. Written modification may be made by a revised sealed proposal form, by a writing on the envelope, or by a separate document. The modification should state specifically what is to be modified and by what amount or state the item to be modified and what the correct amount should be. **Unless otherwise specified by the Offeror, the modification will be applied to the TOTAL BASE PROPOSAL amount shown on the Proposal Form.** In order to maintain the integrity of the sealed proposal process, modifications should be phrased

as increases or decreases in the total proposal (i.e. minus \$5000); they should not state a new total base proposal. **The County will not accept proposal withdrawals or modifications by telegram, facsimile, or email.**

7. RECEIPT OF PROPOSALS:

- (a) Proposals will be received at or before the date and the hour and at the place stipulated in the Invitation for Proposals as may be modified by subsequent Addenda.
- (b) It is the responsibility of the Offeror to assure that his proposal and any proposal modifications are delivered to the place designated for receipt of proposals by the date and hour (deadline) set for receipt of proposals. Therefore, it is the Offeror's responsibility to take into account all factors which may impact on its proposal deliverer/courier's ability to deliver the proposal and to implement whatever actions are necessary to have the proposal delivered to the proper proposal receipt location prior to the proposal receipt deadline. No proposals or proposal modifications submitted or offered after the date and hour designated for receipt of proposals will be accepted or considered. **Again, the County will not accept any proposal, proposal withdrawal, or proposal modification by telegram, facsimile, or email.**
- (c) The Proposal Officer is the County's representative designated to receive proposals at the time and place noted in the RFP and to open the proposals received at the appointed time.
- (d) **The official time used for the receipt of responses is determined by reference to the clock designated by the Proposal Officer.** The Proposal Officer shall determine when the Proposal Receipt Deadline has arrived and shall announce that the Deadline has arrived and that no further proposals or proposal modifications will be accepted. All proposals and proposal modifications in the possession of the Proposal Officer and his assistants at the time the announcement is completed are deemed to be timely, whether or not the proposal envelope has been physically date/time stamped or otherwise marked by the time the Proposal Officer makes the deadline announcement.

8. OPENING OF PROPOSALS:

- (a) No public opening is required for Requests for Proposal. Please refer to schedule for further clarification.
- (b) The provisions of § 2.2-4342 of the Code of Virginia (1950), as amended, shall be applicable to the inspections of proposals received.

9. ERRORS IN PROPOSALS: A Offeror may withdraw his proposal from consideration if the price proposal was substantially lower than the other proposals due solely to a mistake therein, provided the proposal 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 proposal, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection or original work papers, documents and materials used in the preparation of the proposal sought to be withdrawn.

County policy requires that offerors for public construction contracts be given an opportunity to withdraw their proposals due to error. The withdrawal procedure outlined below will be utilized:

Withdrawal procedure: the Offeror shall give notice in writing of his claim of right to withdraw his proposal within two (2) business days after the conclusion of the proposal opening procedure and shall submit original work papers, documents, and materials used in the preparation of the proposal with such notice. The contract shall not be awarded until the two (2) working day period has lapsed.

The delivery of an Offeror's original work papers, documents, and other materials used in preparation of the proposal must be submitted either in person or by registered mail. The County will treat the materials as trade secrets or proprietary information subject to the conditions of subsection F of Virginia Code § 2.2-4342.

No proposal shall be withdrawn under this section when the result would be the awarding of the contract to another proposal of the same Offeror or of another Offeror in which the ownership of the withdrawing offeror is more than five (5) percent.

No Offeror who is permitted to withdraw a proposal 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 proposal was submitted.

If a proposal is successfully withdrawn, the lowest remaining proposal shall be deemed to be the lowest proposal. However, the County may deny the withdrawal of a proposal subsequent to Virginia Code § 2.2-4330. The County must notify the Offeror in writing of its decision stating its reasons and award the contract to such Offeror at the proposal price, provided that such Offeror is responsible and responsive.

10. REJECTION OF PROPOSALS: The County reserves the right to cancel the Invitation to Proposal and to reject all proposals at its sole discretion when such rejection is in the interest of the County, or to reject the proposal of any Offeror who is determined to be not responsive or responsible. A statement justifying the decision to reject all proposals will be placed in the procurement file.

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

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

- (a) Sufficient financial ability to perform the contract as evidenced by the offeror's ability to obtain payment and performance bonds from an acceptable surety;
- (b) Appropriate experience to perform the Work described in the proposal documents;

- (c) Any judgments entered against the offeror, or any officers, directors, partners or owners for breach of a contract for construction;
- (d) Any substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause where the substantial noncompliance is documented;
- (e) a conviction of the offeror or any officer, director, partner, project manager, procurement manager, chief financial officer, or owner in the last five years of a crime relating to governmental or non-governmental construction or contracting; or
- (f) Any current debarment of the contractor, any officer, director or owner, from proposal or contracting by any public body of any state, any state agency, or any agency of the federal government.

The County reserves the right to disqualify or refuse to accept the proposal of any Offeror who has been convicted, or entered a plea of guilty or *nolo contendere*, in any federal or state court to any charge involving any unlawful, corrupt or collusive practice involving a public contract whether federal, state or local, or who has been determined in any judicial proceeding to have violated any antitrust, proposal-rigging or collusive practice statute in connection with any public contract, or against whom such formal criminal prosecution or other judicial proceeding has been instituted.

An Offeror who, despite being the apparent low Offeror, is determined not to be a responsible offeror shall be notified in writing in conformance with the procedures in section 2.2-4359 of the Code of Virginia (1950), as amended.

12. AWARD OF CONTRACT: See Paragraph V. (B) of Request for Proposal.

13. ETHICS IN PUBLIC CONTRACTING: The provisions, requirements and prohibitions as contained in § 2.2-4367 *et seq.* Code of Virginia (1950), as amended, pertaining to offerors, offerors, contractors, and subcontractors are applicable to this project.

14. PRE-PROPOSAL CONFERENCE: See the Paragraph VII of the Request for Proposal.

Attachment E Site Map

