

COMMONWEALTH OF VIRGINIA



**GENERAL CONDITIONS OF THE CONSTRUCTION MANAGER “AT RISK”  
CONSTRUCTION CONTRACT**

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**PLEASE NOTE:** The General Conditions of the Construction Manager “At Risk” Construction Contract (CO-7CM) (“General Conditions”), have been created specifically for the use of agencies of the Commonwealth of Virginia, which may not alter any provisions without the express written approval of the Virginia Department of General Services (DGS), Division of Engineering and Buildings. The General Conditions have significant legal implications and shall not be altered or modified. Nothing in the General Conditions shall be amended or deleted or its intent changed, except by an approved and properly issued Supplemental General Conditions. The Commonwealth of Virginia makes no representation as to their suitability for any other purpose. Note: Governmental entities not subject to DGS purview intending to modify the General Conditions for their use should consult with their legal counsel.

## 1. DEFINITIONS

Whenever used in the Contract Documents, the following terms have the meanings indicated, which are applicable to both the singular and plural variations thereof:

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

**A/E Services:** The entirety of the services required of the A/E pursuant to the A/E's contract with the Owner for the Project.

**Architect/Engineer ("A/E"):** The Virginia licensed Architect or Engineer that contracts with the Owner to provide the A/E Services for the Project. The A/E is a separate contractor and not an agent of the Owner. The term includes any subcontractors, associates, or consultants employed by the A/E to assist in providing the A/E services.

**As-Built Drawings:** The As-Built Drawings is a set of all Drawings, Specifications, addenda, approved Shop and setting Drawings, Change Orders and other modifications which are updated by the Contractor throughout the performance of the Work to contemporaneously record all changes and variations made during construction. The representation of such variations shall be neatly and clearly marked in color and shall include such supplementary notes, symbols, legends, and details as may be necessary to clearly show the as-built construction of the Work.

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

**Change Order:** A document (CO-11) issued on or after the effective date of the Contract which is agreed to by the Construction Manager and approved by the Owner, and which authorizes an addition, deletion, or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. The term Change Order shall also include initiating and confirming Change Orders issued pursuant to Section 38(a)(3). A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

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

**Commissioner of Labor and Industry:** The Commonwealth of Virginia Commissioner of Labor and Industry.

**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.

**Construction Management Contingency or CM Contingency:** The amount included in the GMP which shall be used for payment of the costs incurred for Work required for the Project but which was reasonably unforeseen at the time the GMP was developed and which actually increases the Cost of the Construction Work. Potential costs include, but are not necessarily limited to: refinements to the Plans or Specifications as a result of the continuing development of the design scope gaps between trade contractors; contract default by Subcontractors; and issues related to Site conditions which a reasonable and prudent CM would not have identified during the Part 1 Preconstruction Scope of Services required of the CM. The CM

Contingency is not intended to address the cost of Project scope changes requested by the Owner after the GMP was developed.

Costs which are paid from the CM Contingency shall be paid as a Cost of the Construction Work. The CM Contingency may be applied without the necessity of a Change Order, but only may be used with the prior review and written approval of the Owner. Use of a portion of the CM Contingency does not change the GMP, but does increase the compensation to be paid the CM for the Work while simultaneously and equally decreasing the amount of money remaining in the CM Contingency.

The Owner shall specify the procedure for the CM to request the use of any portion of the CM Contingency. The CM shall periodically report to the Owner as is mutually agreeable, but not less than monthly, specifying: the amount of the CM Contingency used, the reason for the expenditure, and the justifications for the use of the CM Contingency. All CM Contingency remaining at Project conclusion shall be retained by the Owner.

**Construction Manager or CM:** The Person or entity with whom the Owner enters into a Contract for the Work. The CM is “at risk” for providing the Work within the GMP. The Construction Manager is also at times called the Contractor in the Contract Documents and the Virginia Public Procurement Act.

**Contract:** The Contract between Owner and Construction Manager and the Contract Documents incorporated therein.

**Contract Completion Date:** The date by which the Work must achieve Substantial Completion. The Contract Completion Date is established in the Notice to Proceed, based on the Time for Completion, or set forth as a specific date in the Contract.

**Contract Documents:** The Contract and any documents expressly incorporated therein. Such incorporated documents customarily include the CM Proposal, the General Conditions, any Supplemental General Conditions, any Special Conditions, the Plans and the Specifications, and all modifications, including addenda, and subsequent Change Orders.

**Contract Price:** The total compensation payable to the CM for performing the Work in accordance with the Contract Documents, subject to modification by Change Order. Also known as the GMP, as defined below.

**Contractor:** The person or entity with whom the Owner has entered into the Contract for the Work. The term Contractor shall also mean the CM.

**Cost of the Construction Work:** The direct costs necessarily incurred for the proper performance of the Work, such as wages for labor, costs for material and equipment incorporated into the Work, Subcontract costs, tools consumed in the work, and temporary facilities and machinery used for the Work. Cost of the Construction Work also includes sales and use taxes for the Work. Cost of the Construction Work does not include the following: principal office overhead or general expenses; compensation for principal office personnel; capital expenses; costs incurred due to the CM’s negligence or breach of the Contract; costs for Part 1 preconstruction services; costs which would cause the GMP to be exceeded unless in a Change Order approved by Owner; costs covered by the Construction Manager’s Fee, the General Conditions Fee, the Insurance and Taxes Fee, or any unused CM Contingency; and any cost not expressly included in the definition of the Cost of the Construction Work.

**Construction Manager’s Fee or CM Fee:** The lump sum amount included in the GMP to compensate the CM for all costs of home office expenses, overhead, profit, and general management services for the Work and the Contract during Construction.

**CPSM:** The most current edition of the DEB Construction and Professional Services Manual, as amended and revised from time to time.

**Critical Path:** The longest continuous sequential duration of dependent activities from the Date of Commencement to the Contract Completion Date that defines the minimum overall time necessary to complete the Project, such that a delay of any activity along the Critical Path will result in a delay of the Contract Completion Date unless the duration of a subsequent activity on the Critical Path is reduced to offset the delay and maintain the Contract Completion Date.

**Date of Commencement:** The date as indicated in the written Notice to Proceed, the receipt of the earliest Building Permit, or a date mutually agreed to between the Owner and CM in writing, whichever is the latest.

**Day:** Calendar day unless otherwise noted.

**DEB:** Division of Engineering and Buildings, a division of the Commonwealth of Virginia Department of General Services.

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

**DGS:** Virginia Department of General Services.

**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.

**DSBSD:** Virginia Department of Small Business and Supplier Diversity.

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

**Field Order:** A written order issued by the A/E 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:** Completion and full performance of all Work in accordance with the terms and requirements of the Contract Documents, including the completion of all items identified on punch lists generated through the inspections set forth in Section 44(b) and submission of all information, manuals, warranties, and documentation required by the Contract.

**Final Completion Date:** The date of the Owner's acceptance of the Work following Final Completion.

**Final Compliance Report:** A report where the Contractor shall certify and report on its compliance with the Small Business Procurement Plan, submitted by the Contractor in its Bid for the Contract, to the Owner through DGS' eVA system

**Final Payment:** The final payment that the CM receives pursuant to the applicable provisions of Section 36, except in the event no final payment is made due to termination of the Contract under either Sections 41 or 42. In the event of a termination for cause under Section 41, the Final Payment shall be when the termination became effective. In the event of a termination for convenience under Section 42, the Final Payment shall be either the payment of compensation for termination that the CM receives according to the provisions of Section 42(a), or the Owner's determination that no compensation for termination is due the CM under Section 42(a), as the case may be.

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

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

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

**General Conditions:** The General Conditions of the Construction Manager "At Risk" Construction Contract (CO-7CM).

**General Conditions Fee:** The lump sum amount included in the GMP as compensation to the CM for all costs for all of the following:

- a. Project specific personnel for the general management of the Work, including the CM's project manager, assistant project manager, superintendent, assistant superintendent, scheduler, security, administrative assistants, and quality and safety control personnel, including vehicles and transportation.
- b. Mobilization and demobilization.
- c. Project Site facilities, including Site offices, necessary temporary facilities for health and sanitation, signage, and other equipment to enable the completion of the Work not attributable to specific components of the Work.
- d. Office equipment, furniture and supplies, Project computer and communication equipment and supplies, drawing/printing requirements, Project photographs, per diem costs, labor transportation, and Project specific overhead costs directly attributable to the general management of the Work.
- e. Other expenses identified in the CM Proposal and agreed to by the Owner to be included in the General Conditions Fee.

**Guaranteed Maximum Price or GMP:** The GMP represents the maximum compensation to be paid to the CM for the Work and is calculated as the sum of the Cost of the Construction Work, the CM Contingency, the General Conditions Fee, the Insurance and Taxes Fee and the CM Fee.

**Insurance and Taxes Fee:** The compensation to the CM to cover all costs incurred by the CM to provide and maintain: the required Standard Performance Bond and Standard Labor and Material Payment Bond; all insurance coverages required by the Contract Documents or by law, including but not limited to commercial general liability, professional liability, umbrella or excess, builder's risk, and worker's compensation; all federal, state and local business, income and license taxes. The Insurance and Taxes Fee shall be stated as a percentage of the Cost of the Construction Work.

**Limited Renovation:** Renovations that do not involve structural work (including, but not limited to, foundations, supports, beams, exterior roof supports, load bearing walls) and that do not involve Hot Work (as defined by the Virginia Statewide Fire Prevention Code) with the exception of brazing, soldering, and grinding.

**Major Renovation:** Renovations that do not meet the definition of Limited Renovation.

**Notice:** Notice required by the Contract shall be given in writing to the email address or physical delivery location identified in the Contract Documents for receipt of Notice by the receiving party. A Notice is deemed to have been properly given and effective at the time such Notice is: (i) deposited with a nationally

recognized overnight delivery service using no more than two (2) business day delivery service for delivery to the Notice address; (ii) hand delivered to the Notice address; (iii) enclosed in a postage prepaid envelope addressed to the Notice address and delivered to a United States Postal Service for delivery by prepaid certified or registered mail; or (iv) sent via email to the email address identified for Notice in the Contract Documents.

**Notice to Proceed:** A written Notice given by the Owner to the CM fixing the date on which the Time for Completion will commence for the CM to begin the execution of the Work. The Notice to Proceed will identify the Contract Completion Date if not otherwise established by the Contract.

**Owner:** The public body with whom the CM has entered into the Contract for the Work. The term Owner shall also mean the Agency.

**Part I Preconstruction Scope of Services:** Those services which were, or reasonably should have been, provided and completed by the CM pursuant to the Contract Between Owner and Construction Manager at Risk For Part 1 – Preconstruction Services (CO-9 CM (1)).

**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.

**Prevailing Wage Rate:** Prevailing Wage Rate means that rate, amount, or level of wages, salaries, benefits and other remuneration prevailing for a classification of mechanics, laborers, or workers employed for the same work in the same trade, craft or occupation in the locality of the Project as determined by the Commissioner of Labor and Industry.

**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 and the A/E Services.

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

**Project Manager:** The Project Manager shall be the Owner's designated representative on the Project. The Project Manager shall be the person through whom the Owner generally conveys written decisions and instructions. All Notices to the Owner and all information required to be conveyed to the Owner shall be conveyed to the Project Manager unless otherwise stated in the Contract. The scope of the Project Manager's authority is limited to that authorized by the Owner. The Owner may change the Project Manager from time to time and may, in the event that the Project Manager is absent, disabled or otherwise temporarily unable to fulfill their duties, appoint an interim Project Manager.

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

**Record Drawings:** Record Drawings are a final compilation set of drawings showing the "as built" condition of the Work, including all conditions, locations, and dimensions based on the As-Built Drawings. The Record Drawings shall contain the Plans, Specification, Addenda, approved Shop Drawings, and any other information needed to show the final condition of the work, actual location of piping and utilities, the depths of pilings or caissons if pilings or caissons were in the construction, and the integration of all Change Orders to the Work.

**Recycled:** Equipment, materials, and accessories which have been previously used and that have been processed to form a new product deemed an equal per Section 26.b.

**Service Disabled Veteran-Owned Business:** A business that meets the definition of “Service disabled veteran business” as set forth in *Code of Virginia*, § 2.2-4310.

**Schedule of Values:** That portion of Form CO-12 prepared by the CM and acceptable to the Owner which indicates the portion of the Contract Price to be paid for each trade or major component of the Work.

**Shop Drawings:** The drawings, diagrams, illustrations, schedules, installation, descriptions, and other data prepared by or for the CM to provide detailed information for the fabrication, location, erection, installation, connection, and methodology associated with the Work. Shop Drawings are intended to aid in the preparation and installation of materials and to ascertain that the materials proposed by the CM conform to the requirements of the Contract Documents.

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

**Small Business:** A business certified as a small business by the DSBSD.

**Small Business Procurement Plan:** The proposed type and percentage of small business participation in the Total Base Bid Amount submitted by the CM as part of its Bid.

**Special Conditions:** That part of the Contract Documents which describes special or additional requirements or procedures applicable to the Project. The Special Conditions do not amend or supersede the General Conditions.

**Specifications:** That part of the Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship for the Work.

**Subcontractor:** A person or firm having a direct contract with CM or with any other Subcontractor for the performance of the Work. Subcontractor includes any person or firm who provides on-Site labor but does not include a Supplier.

**Submittals:** All Shop, fabrication, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents which are specifically prepared by or for the CM 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 CM to illustrate material or equipment conformance of some portion of the Work with the requirements of the Contract Documents. Submittal as used herein includes Shop Drawings.

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

**Supplemental General Conditions:** An amendment or modification which amends or supplements the General Conditions.

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

**SWaM/SDV Business:** All subcategories of Small Businesses certified by the DSBSD including Micro Business, Minority-Owned Business, Service-Disabled Veteran-Owned Business, Small Business, and/or Women-Owned Business together as a group.



**Time for Completion:** The number of consecutive Days following the Date of Commencement within which the CM must achieve Substantial Completion of the Work in accordance with the Contract Documents.

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

**Unit Rate General Conditions Fee:** A unit rate which states the General Conditions Fee as a daily rate to be used in the event the Contract Completion Date is modified to accommodate a major change in the Work.

**VUSBC:** Virginia Uniform Statewide Building Code.

**Work:** The construction and services required by the Contract Documents, whether completed or partially completed, including, but not limited to, furnishing labor, furnishing, and incorporating materials and equipment into the Construction. The Work includes the entire completed Construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents or which may reasonably be expected to be provided as part of a complete, code compliant and functioning system for those systems depicted in the Plans and Specifications, including those items and components which were or reasonably should have been identified as part of the Work by the CM as part of its Part I Preconstruction Scope of Services.

## 2. CONTRACT DOCUMENTS

The Contract Documents consist of the Contract and all other documents identified therein as Contract Documents as more precisely defined above.

## 3. LAWS AND REGULATIONS

- a. The CM shall comply with the Virginia Uniform Statewide Building Code and 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. The CM shall assure that all Subcontractors and tradespeople who perform Work on the Project are properly licensed by the Department of Professional and Occupational Regulation as required by Title 54.1, Chapter 11, and Article 1 of the *Code of Virginia* and by applicable regulations.
- b. This Contract and all other contracts and Subcontracts are subject to the provisions of Article 3, Chapter 4, Title 40.1, *Code of Virginia*, relating to labor unions and the “right to work.” The CM and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any Work related to the Project shall comply with all of the said provisions.
- c. IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Contract, the CM certifies that it does not and shall not during the performance of this Contract knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986, or otherwise violate its provisions.
- d. E-VERIFY PROGRAM: Pursuant to *Code of Virginia*, § 2.2-4308.2, any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of \$50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract. Any such employer who fails to comply with these provisions may be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment may cease

upon the employer's registration and participation in the E-Verify program. If requested, the employer shall present a copy of their Maintain Company page from E-Verify to prove that they are enrolled in E-Verify.

- e. In performing the Work under this Contract, the CM shall comply with the provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia*. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search or administrative warrant.
- f. Building Permit: Because this Project is on Commonwealth of Virginia property, codes or zoning ordinances of local political subdivisions do not apply to Work at the Site. The VUSBC applies to the Work and is administered by the Building Official for State-owned buildings and real property. The Building Permit will be obtained and paid for by the Owner. All other permits, local license fees, business fees, taxes, or similar assessments imposed by the appropriate political subdivision and the Department of Environmental Quality shall be obtained and paid for by the CM. See Section 25 of these General Conditions for utility connection fees and services.
- g. The CM shall include in each of its Subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements in Subsections (a), (b), and (c) of Section 37 of these General Conditions with respect to each lower-tier Subcontractor and Supplier.
- h. The CM, if not licensed as an asbestos abatement contractor in accordance with *Code of Virginia*, § 54.1-514, shall have all asbestos-related Work performed by Subcontractors who are duly licensed as asbestos contractors for the Work required.
- i. Lead Based Paint Activities: If the Contract Documents indicate that lead based paint is present on existing materials, components, or surfaces, the CM shall conform to the following:
  - 1. The requirements set forth in 40 CFR 745.233 – Lead Based Paint Activities Requirements in selecting and performing the means, methods, and procedures for performing the Work. This includes, but is not limited to, training of personnel, lead abatement, encapsulation of lead containing materials, removal, and handling of lead containing materials, and methods of disposal.
  - 2. The requirements for employee protection contained in 29 CFR Part 1926, Subpart D, and the requirements for record-keeping contained in 29 CFR Part 1910.
  - 3. The Virginia Department of Labor and Industry's (DLI) Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees published in the Virginia Administrative Code, 16 VAC 25-35, requiring, among other things, that a permit be issued to the lead abatement contractor, or any subsequent regulation issued by DLI pertaining to lead based paint abatement.
- j. If the CM violates laws or regulations that govern the Project, the CM shall take prompt action to correct or abate such violation and shall indemnify and hold the Owner harmless against any fines and/or penalties that result from such violation. The CM also shall indemnify and hold the Owner harmless against any third-party claims, suits, awards, actions, causes of action or judgments, including but not limited to attorney's fees and costs incurred thereunder, that arise or result from CM's violation of laws or regulations.
- k. If the Work includes any land disturbing activities, the CM shall have on-Site an individual certified by the Department of Environmental Quality as a Responsible Land Disturber in accordance with *Code of Virginia*, § 62.1-44.15:51.

1. Unless otherwise specified in the Supplemental General Conditions, the CM is neither required nor prohibited from entering into or adhering to agreements with one or more labor organizations, or otherwise discriminating against Subcontractors for becoming or refusing to become, or remaining signatories to or otherwise adhering to, agreements with one or more labor organizations. This section does not prohibit CM or Subcontractors from voluntarily entering into agreements with one or more labor organizations. Both the Agency and CM are entitled to injunctive relief to prevent any violation of this section.

This section does not apply to any public-private agreement for any construction in which the private body, as a condition of its investment or partnership with the state agency, requires that the private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the private party is a signatory and is thus legally bound with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, or the Railway Labor Act, 45 U.S.C. § 151 *et seq.*

This section does not prohibit an employer or any other person covered by the National Labor Relations Act or the Railway Labor Act from entering into agreements or engaging in any other activity protected by law.

This section shall not be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act or the Railway Labor Act.

- m. Payment of Prevailing Wages Pursuant to Virginia Code 2.2-4321.3

*Code of Virginia § 2.2-4321.3* and the following requirements shall be applicable to the Work of the Contract if the Contract Price is greater than \$250,000.00:

1. The CM agrees that all remuneration to any individual providing labor for the Project or the Work as a mechanic, laborer, worker or equivalent shall be paid at a rate not less than the Prevailing Wage Rate beginning upon the individual's first day of work at or for the Project.
2. Upon award of the Contract, the CM shall certify, under oath, to the Commissioner of Labor and Industry the pay scale for each craft and trade to be employed for, or to provide labor for, the Project or the Work by the CM and any Subcontractors. The CM's certification shall include all information required by *Code of Virginia § 2.2-4321.3(G)*. The CM shall provide a copy of this certification to the Owner at the time it is provided to the Commissioner of Labor and Industry.
3. The CM shall ensure that each individual providing labor as a mechanic, laborer, worker or equivalent shall be accurately classified in conformance with the Prevailing Wage Rate determinations.
4. The CM and all Subcontractors shall keep, maintain, and preserve all records relating to the occupation, work classification, wages paid to and hours worked for each individual providing labor for the Project or the Work as a mechanic, laborer, worker or equivalent in a manner which complies with the requirements of *Code of Virginia § 2.2-4321.3(H)*. The CM and all Subcontractors shall retain these and any other required payroll records for the period required by *Code of Virginia § 2.2-4321.3(H)*. The CM and its Subcontractors shall make available to the Owner all records required by *Code of Virginia § 2.2-4321.3(H)* for inspection and copying within five (5) days of Owner's request.

5. The CM and all Subcontractors shall post all Prevailing Wage Rates applicable to the Project and the Work in a prominent and easily accessible place at the Site. The CM and all Subcontractors shall timely make all postings, updates to postings, and certification required by *Code of Virginia* § 2.2-4321.3(I). The CM shall provide the Owner with a copy of each certification made to the Commissioner of Labor and Industry pursuant to *Code of Virginia* § 2.2-4321.3(I) at the time the certification is provided to the Commissioner of Labor and Industry.
6. The CM shall indemnify and hold harmless the Owner from any fines, demands, claims, suits and damages, including any attorney's fees incurred by the Owner, resulting from or relating to the CM's or any Subcontractor's failure to pay the Prevailing Wage to a mechanic, laborer, worker or equivalent individual or to comply with the requirements of *Code of Virginia* § 2.2-4321.3.

#### 4. NONDISCRIMINATION

- a. CM shall comply with the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, the Virginia Human Rights Act, as amended, and the laws of the Commonwealth of Virginia and all Executive Orders in effect at the time of the Work which safeguard individuals from unlawful discrimination in employment.
- b. *Code of Virginia* § 2.2-4311 shall be applicable to the Work of the Contract. During the performance of this Contract, the CM agrees as follows:
  1. The CM shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The CM agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  2. The CM, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such CM is an equal opportunity employer.
  3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  4. The CM shall include the provisions of the foregoing subparagraphs 1, 2 and 3 in every Subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor and Supplier.
- c. *Code of Virginia*, § 2.2-4201 shall be applicable to the Work of the Contract. During the performance of this Contract, the CM agrees as follows:
  1. The CM shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the CM. The CM shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the CM has contracts over \$10,000.
  2. The CM will, in all solicitations or advertisements for employees placed by or on behalf

of the CM, state that CM is an equal opportunity employer. However, 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 chapter

3. If the CM employs more than five (5) employees, the Contractor shall: (i) provide annual training on the CM's sexual harassment policy to all CM's supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees who are required to complete sexual harassment training provided by the Commonwealth of Virginia Department of Human Resource Management; and (ii) post the CM's sexual harassment policy in: (a) a conspicuous public place in each building located in the Commonwealth that the CM owns or leases for business purposes; and (b) the CM's employee handbook.
4. The CM shall include the provisions of the foregoing subparagraph 1, 2 and 3 in every Subcontract and purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor and Supplier.
- d. Where applicable, the Virginians with Disabilities Act and the federal Americans with Disabilities Act shall apply to the CM and all Subcontractors and Suppliers.
- e. The Owner does not discriminate against faith-based organizations as defined in *Code of Virginia* § 2.2-4343.1(B).

## 5. PROHIBITION OF ALCOHOL AND OTHER DRUGS

- a. The CM shall establish a written policy to maintain and enforce a drug-free workplace, to specify actions that will be taken against persons for violations of the policy, and to require that such policy be binding on each of its employees, Subcontractors, and Suppliers performing Work of the Contract.
- b. The CM's policy shall prohibit the following acts by all CM, Subcontractor, and Supplier personnel at the Site:
  1. The manufacture, distribution, dispensation, possession, or use of a controlled substance or marijuana, except possession and medically prescribed use of prescription drugs; and
  2. The impairment of judgment or physical abilities due to the use of a controlled substance or marijuana, including impairment from prescription drugs.
- c. The CM shall post a copy of this policy in a conspicuous place at the Site and assure that all personnel, including potential hires, are advised of the policy. A violation of this policy will be recognized as a breach of Contract and may result in termination of the Contract.
- d. The CM shall include in all solicitations or advertisements for employees placed by or on behalf of the CM that the CM maintains a drug-free workplace.
- e. The CM shall include the foregoing provisions as binding upon each Subcontractor and Supplier in every subcontract or purchase order over \$10,000.
- f. 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 CM 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.

## 6. TIME FOR COMPLETION

- a. The CM shall achieve Substantial Completion on or before the Contract Completion Date. Unless otherwise specified, the CM shall achieve Final Completion within thirty (30) Days after the Contract Completion Date.
- b. The CM acknowledges and agrees that the Owner is relying upon the Time for Completion and Contract Completion Date for planning the use and Beneficial Occupancy of the Work and for all other purposes. If the CM fails to achieve Substantial Completion by the Contract Completion Date, the CM shall be subject to payment of actual damages incurred by the Owner or liquidated damages, if provided for in the Contract.
- c. The CM, in submitting its bid or proposal, acknowledges that the Time for Completion is a reasonable duration and period for performing the Work and that it has taken into consideration normal weather conditions for the period of performance. Normal weather does not mean statistically average weather, but rather means a range of weather patterns which might be anticipated based on weather conditions and events for the past ten (10) years. Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, National Oceanic and Atmospheric Administration / Environmental Data and Information Service, National Climatic Center and National Weather Service. The data sheets to be used shall be those for the locality or localities closest to the Site. No additional compensation, costs, or damages will be paid to the CM because of normal weather conditions, including normal adverse weather to be anticipated during the Project. An extension of time for abnormal adverse weather conditions which directly impact the Work will be considered by the Owner upon under the following conditions, all of which must be strictly complied with and demonstrated by the CM:
  1. A request for extension of time-based on abnormal adverse weather conditions must be made in writing within fourteen (14) Days of the completion of the calendar month during which the abnormal adverse weather conditions impacted the Work at the Site. The request for additional time shall be substantiated by weather data collected during the period of delay at the Site. Said data must demonstrate an actual departure from weather conditions that could have been anticipated at the Site during the dates in question.
  2. The abnormal adverse weather must have caused a delay to the Contract Completion Date as a result of a delay to the Critical Path as depicted on the accepted "critical path method" schedule or the approved bar graph schedule current at the time of the weather event. No extension will be considered for any portion of any delay which consumes only Float.
  3. All of the evidence and data supporting the request (including both historical data and the recordings at the Site during the time of delay) must be furnished to the Owner before the end of the calendar month following the month for which the request is made.

Compliance with the requirements of this section is a condition precedent to the CM's entitlement to any change or adjustment to the Contract Completion Date for impacts from abnormal weather conditions.
- d. The CM's execution of the Contract is a representation and agreement that the CM has visited the Site and reviewed the requirements of the bid documents, the Contract Documents, local conditions, availability of materials, equipment, and labor, the reasonable time required for the Owner to respond to Submittals, and any other factors which may affect the performance of the Work, and has taken all these factors into consideration in submitting its bid and executing this Contract.

## 7. CONDITIONS AT SITE

- a. The CM shall have visited the Site prior to bidding or submitting its proposal 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 conditions, improvements and work within or adjacent to the Site. The CM shall not submit any claims or any request for adjustments of the Contract Price or Contract Completion Date which result from its failure to consider such conditions.
- b. If in the performance of the Work the CM encounters (i) hidden physical conditions of a building being modified which are materially different from those ordinarily encountered or generally recognized as inherent in the activities being performed or (ii) subsurface or concealed latent conditions which are materially different from those frequently present in the locality or from those indicated in the Contract Documents, the CM shall promptly provide Notice to the Owner and A/E before the conditions are disturbed and not later than seven (7) Days after discovery. The A/E shall promptly review the conditions and propose such changes or adjustments, if any, in the Contract Documents that may be necessary to address the conditions. The CM must request any change in the Contract Price or Contract Completion Date for such conditions pursuant to the applicable requirements in Sections 38, 39 and 43 of these General Conditions. Compliance with the requirements of this section is a condition precedent to the CM's entitlement to any change or adjustment in the Contract Price or Contract Completion Date as a result of such Site conditions.
- c. If the CM, during the course of the Work, observes the existence of any material which it knows, should know, or has reason to believe is hazardous to human health, the CM shall promptly notify the Owner in writing before the material is disturbed further or the affected work is performed. The Owner will provide the CM with instructions regarding the disposition of the material. The CM shall not perform any Work involving the material or any Work causing the material to be less accessible prior to receipt of special instructions from the Owner. The CM must request any change in the Contract Price or Contract Completion Date for such conditions pursuant to the applicable requirements in Sections 38, 39 and 43 of these General Conditions. Compliance with the requirements of this section is a condition precedent to the CM's entitlement to any change or adjustment in the Contract Price or Contract Completion Date as a result of such Site conditions.

## 8. CONTRACT SECURITY

- a. For contracts with a value exceeding Five Hundred Thousand Dollars (\$500,000), the CM shall deliver to the Owner or its designated representative, a Commonwealth of Virginia Standard Performance Bond, DGS-30-084 (CO-10) and a Commonwealth of Virginia Standard Labor and Material Payment Bond, DGS-30-088 (CO-10.1), each fully executed by the CM 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 Contract Price. If more than one Surety executes a bond, each shall be jointly and severally liable to the Owner for the entire amount of the bond. Sureties shall be selected by the CM, subject to approval by the Owner. No payment on the Contract shall be due and payable to the CM until the bonds have been approved by the Owner and the Office of the Attorney General of Virginia. To facilitate review of the bonds by the Office of the Attorney General, the power of attorney from the surety company to its agent who executes the bond shall be attached to the bond, or, if not so attached, prior to the execution of the bonds by the surety, recorded in the Office of the Clerk of Court for the City of Richmond, Virginia, at the John Marshall Court Building, 400 North Ninth Street, Richmond, VA 23219.
- b. For the purposes of all Standard Labor and Material Payment Bonds entered into, the term "subcontractors" as used in *Code of Virginia*, § 2.2-4337(A)(2) is interpreted to mean any Subcontractors at any tier who participated in the prosecution of the Work undertaken by the CM (referred to in *Code of Virginia*, § 2.2-4337(A)(2) as the "prime contractor"), whether such Subcontractor had a direct contract with the CM (*i.e.*, prime contractor) or another Subcontractor,

regardless of whether there were one or more other intervening Subcontractors contractually positioned between it and the CM (*i.e.*, prime contractor).

- c. *Code of Virginia*, § 2.2-4338 allows for alternative forms of security in lieu of payment and/or performance bonds. No alternative forms of security shall be allowed unless approved in writing by Owner prior to CM's submission of its Bid or proposal.
- d. Mechanic's liens may not be filed or recorded on Owner, Agency, or Commonwealth property. The CM shall keep the Owner's property free and clear from all mechanics' liens. The CM shall, upon Notice from the Owner, cause any liens filed or recorded to be released within ten (10) Days from Notice at its cost and expense; and if the CM fails to do so, the Owner shall have the right, but not the obligation, to cause such lien to be released by bonding or otherwise, and the CM shall indemnify and hold harmless the Owner from all costs and expenses incurred or to be incurred as a result, including bond premiums, court costs and attorneys' fees arising from or related to such liens. At the Owner's option, it may withhold payment of any sums due the CM until any such liens are released, and may deduct such costs or expenses from any payment then due or thereafter becoming due from the Owner to the CM.

## 9. SUBCONTRACTS

- a. The CM shall, as soon as practicable after the signing of the Contract, notify the Owner and A/E in writing of the names of all Subcontractors proposed for the principal parts of the Work and of such others as the A/E may direct. Where the Specifications establish qualifications or criteria for Subcontractors, manufacturers, or individuals performing Work on the Project, the CM shall be responsible for ascertaining that those proposed meet the criteria or qualifications. The CM shall not employ any Subcontractor that the Owner may, within a reasonable time, object to as unsuitable. Neither the Owner nor the A/E shall direct the CM to contract with any particular Subcontractor unless provided in the Specifications or Invitation for Bids.
- b. The Owner may select a particular Subcontractor for a certain part of the Work and designate on the RFP that the Subcontractor shall be used for the part of the Work indicated and that the Subcontractor has agreed to perform the Work for the subcontract amount stipulated on the bid or Proposal form. In such case, the CM shall be responsible for that Subcontractor and its work and the Subcontractor shall be responsible to the CM for its work just as if the CM had selected the Subcontractor. If the CM has a reasonable objection to the Subcontractor designated, then the CM shall note the exception in its CM Proposal and the reason for the exception and maintain appropriate provisions for coordinating the work of the Subcontractor. The Owner, at its sole discretion, may accept the CM Proposal with the exception noted and contract separately with the Subcontractor under the provisions of Section 10 of the General Conditions or designate a different Subcontractor.
- c. The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the CM, the Schedule of Values, and Requests for Payment submitted by the CM, and any other documentation submitted by the CM which would tend to show what amounts are due and payable by the CM to the Subcontractor.
- d. The CM shall be fully responsible to the Owner for all acts and omissions of its agents and employees and all tiers of Subcontractors and Suppliers performing or furnishing any of the Work. Nothing in the Contract Documents shall create any contractual relationship between Owner or A/E and any Subcontractor, Supplier or other Person, nor shall it create any obligation on the part of Owner or A/E to pay for or to see to the payment of any moneys due any Subcontractor, Supplier or other Person, except as may otherwise be required by law.
- e. The CM shall be fully responsible for its invitees at the Site and for those of its Subcontractors, Suppliers, and their employees, including any acts or omissions of such invitees.



- f. The CM agrees that it is responsible for all dealings and coordination with 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

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

#### 11. CONSTRUCTION MANAGER'S AND SUBCONTRACTOR'S INSURANCE

- a. The CM shall not commence Work under this Contract until all insurance required hereunder has been obtained from an insurer authorized to do business in Virginia and such insurance has been approved by the Owner. The CM shall provide to the Owner Certificates of Insurance for all required coverage and, upon request, shall provide full copies of the CM's insurance policies. Approval of insurance by the Owner shall not relieve or decrease the liability of the CM hereunder.
- b. The CM shall procure and maintain, as required herein, the following insurance coverages:
  - 1. Workers' Compensation and Employer's Liability Insurance to cover all employees engaged in the Work of a type and in an amount to meet all Commonwealth of Virginia statutory requirements and regulations to provide all benefits to which employees may be entitled, including Employers Liability, with limits no less than \$1,000,000 bodily injury by accident or disease, each employee. Where applicable, coverage shall be extended to cover any claims under the United States Longshoreman's Act and Harbor Workers Act and Jones Act as may be appropriate for the work.
  - 2. Comprehensive General Liability insurance, including coverage for Broad Form Contractual, Premises/Operations, Product and Completed Operations, Independent CM's Liability, and Personal Injury Liability, with limits of at least \$2,000,000 per occurrence and \$2,000,000 aggregate, applicable on a per-project basis. The policy shall not exclude or limit the amount of coverage for the Work of the Project or for explosion, collapse, underground operations, mold, or exterior insulation and finish system ("EIFS").
  - 3. Automobile Liability Insurance with a limit of not less than \$1 million combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned, hired, and borrowed vehicles, whether on-Site or off-Site.

4. CM or the Asbestos Subcontractor shall provide occurrence-based liability insurance with asbestos coverages in an amount not less than \$1,000,000. The following shall be named as additional insureds on this policy: the Commonwealth of Virginia, its officers, employees and agents; the A/E (if not the Asbestos Project Designer); and the CM (where the asbestos work is being performed by the Asbestos Subcontractor).
- c. Unless otherwise specified, CM shall ensure that all insurance required by Subsection (b) above contains the following provisions:
  1. With the exception of Workers' Compensation insurance, the Commonwealth of Virginia, the Owner, and their officers, employees, and agents shall be named as additional insureds on all policies. The additional insureds as stated for the asbestos coverage shall be as stated in Section 11(b)(4).
  2. All insurance coverage shall be considered primary and non-contributory with respect to other insurance that might be available to the CM, A/E, Owner, or Agency.
  3. All insurers shall waive rights of subrogation against the Commonwealth of Virginia, Owner, and Agency for any claims covered by the insurance required herein.
  4. All deductibles or self-insured retentions shall be the sole responsibility of the CM.
- d. No insurance will be canceled, dropped, replaced, or materially changed without at least thirty (30) Days' prior written Notice to and consent of the Owner.
- e. CM shall require each Subcontractor to carry the same insurance, and in the same amounts, required by Section 11(b)(1)-(3) above. The CM shall not allow any Subcontractor to commence Work on the Project until all insurance required of the Subcontractor by this Contract has been obtained by the Subcontractor and approved by the CM.
- f. Prior to award of the Contract, the CM shall submit – on the form provided by the Owner – a Certificate of Coverage verifying Workers' Compensation insurance is in place. The CM shall likewise obtain a Certificate of Coverage for Workers' Compensation insurance from each Subcontractor and shall provide a copy to the Owner prior to the Subcontractor beginning Work at the Project.

## 12. "ALL-RISK" BUILDER'S RISK INSURANCE TO INCLUDE AN INSTALLATION FLOATER

- a. The Contractor shall procure and maintain, at its cost, "all-risk" Builder's Risk insurance with minimum coverage and limits as follows:
  1. **New Construction, Addition, or Major Renovation:** When the Work is new construction, addition, or Major Renovation, the Contractor shall maintain "all-risk" Builder's Risk insurance for the Work and the entire structure or structures, if any, on which the Work is to be done with a minimum limit of not less than the insurable value of the structure(s) plus one hundred percent (100%) of the Contract Price and the value of all Change Orders, to represent the total value of the structure(s) and the Work on a replacement cost basis.
  2. **Limited Renovation:** When the Work is Limited Renovation to an existing structure, the Contractor shall maintain "all risk" Builder's Risk insurance in an amount equal to one hundred percent (100%) of the Contract Price and the value of all Change Orders, to represent the total value of the Work on a replacement cost basis.

When a project is an addition with Limited Renovation to an existing structure, then the insurable value of the existing structure shall not be included.

- b. Builder's risk insurance shall be provided on an "all risk" or equivalent policy form and shall include, without limitation, insurance against all perils. The insurance shall cover the costs of debris removal, temporary buildings, legal requirements, and compensation for A/E services and Contractor services required following an insured loss. The insurance shall cover portions of the Work stored off-Site, Work in transit, and all materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. The policy shall include coverage for mold resulting from a covered peril, property in transit or temporary storage, equipment breakdown/course of construction, and soft costs within the aggregate or blanket limit of the of the policy. If not otherwise covered by the Builder's Risk policy, Contractor also shall provide an installation floater to cover all equipment and materials intended for installation at the Project.

In the event the policy includes any coverages where the limit is less than the aggregate or blanket limit of the policy (sub limits), the coverage shall be no less than the stated minimum sub-limits for the following perils:

- Flood	\$2,000,000
- Earth Movement	\$2,000,000
- Debris Removal	\$2,000,000
- Extra or Expediting Expense	\$250,000
- Interior Water Damage	\$2,000,000
- Loss of Income/Extra Expense	12 Months
- Soft Costs	Blanket or Aggregate Limit/14 Day Waiting Period

The Certificate of Insurance provided to the Owner shall disclose all sub-limits, stating the peril and limit applying to each. In the event that the aggregate policy limit is less than the sub-limits identified above, coverage for all perils must be provided within the aggregate or blanket limit of the policy.

- c. Builder's risk insurance may include a deductible provision if the Owner so provides in the Supplemental General Conditions, in which case the CM will be liable for such deductible whenever a claim arises. Any loss payable under the Builder's Risk insurance shall be payable to the Owner, in accordance with its interests, as they may appear, and then to any other persons insured thereunder.

Written evidence of this insurance and a copy of the policy shall be provided to the Owner no later than thirty (30) Days following the award of the Contract. The policy shall not be canceled, dropped, replaced, or materially changed without at least thirty (30) Days' prior written Notice to and consent of the Owner.

- d. Builder's risk insurance shall include the interest of the CM, the Owner, the Commonwealth, and all Subcontractors and Sub-subcontractors. CM shall maintain the builder's risk insurance until Final Payment by the Owner or until no person other than the Owner has an insurable interest in the Work, whichever is later.
- e. Any insurance provided through the Department of Treasury, Division of Risk Management, on buildings, construction, additions or renovations will not extend to CM's nor Subcontractors' buildings, equipment, materials, tools or supplies unless these items are to become property of the

Owner upon completion of the Project and the Owner has assumed responsibility for such items at the time of the loss.

### 13. TAXES, FEES AND ASSESSMENTS

The CM shall, without additional expense to the Owner, pay all applicable federal, state, and local taxes, fees, and assessments arising out of the Work, except the taxes, fees and assessments on the real property comprising the Site. If the State Building Official elects to have the local building official inspect the Work as provided by *Code of Virginia*, § 36-98.1, the Owner shall pay the resulting fees to the local building official.

### 14. PATENTS

The CM 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 CM shall indemnify and hold harmless the Owner, its officers, agents and employees, against any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the Specifications or Plans as acceptable for use in carrying out the Work. If, before using any invention, process, technique, article or appliance specifically named in the Specifications or Plans as acceptable for use in carrying out the Work, the CM 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, the CM shall promptly advise the Owner and the A/E. The Owner may direct that some other invention, process, technique, article, or appliance be used. Should the CM have reason to believe that the invention, process, technique, article, or appliance so specified is an infringement of a patent, and fails to inform the Owner and the A/E, the CM shall be responsible for any loss or liability due to the infringement.

### 15. ARCHITECT/ENGINEER'S STATUS

- a. The A/E shall have authority to endeavor to secure the faithful performance of the Work by CM. The A/E shall review the CM's Submittals for conformance to the requirements of the Contract Documents and return copies to the CM with appropriate notations. The A/E shall interpret the requirements of the Plans and Specifications and issue Field Orders to the CM as may be required. The A/E shall recommend to the Owner suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Work or the requirements of the Contract. The A/E shall have authority to reject, in writing, Work, including material, installation or workmanship, which does not conform to the Contract Documents or is Defective. The A/E shall determine the progress and quality of the Work, subject to the right of the Owner to make an overriding decision to the contrary. Upon request by the CM, the A/E shall confirm, in writing within fourteen (14) Days, any verbal order or determination made by the A/E.
- b. The A/E shall have no authority to approve or order changes in the Work which alter the design concept or which call for an extension of the Contract Completion Date or Final Completion or a change in the Contract Price.
- c. The Owner shall have the right, but not the duty, to countermand any decision of the A/E and to follow or reject the advice of the A/E, including but not limited to acceptance of the Work, as it deems best in its sole discretion. In those instances where the A/E has been given authority to act, the A/E shall promptly do so, but in the case of disagreement between the A/E and the Owner, the decision of the Owner shall be final. The CM shall not be bound by any determination, interpretation, or decision of the A/E contrary to the A/E's authority or that is not consistent with the Contract Documents. The party taking issue with the determination, interpretation or decision of the A/E shall give the other party written notice of such fact within fourteen (14) days after the determination, interpretation or decision is communicated by the A/E. In the actual performance of the Work, the CM shall proceed in accordance with instructions given by the A/E unless the

Owner and the CM mutually agree in writing or by Change Order that the CM shall proceed otherwise.

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

## 16. INSPECTION

- a. All material and workmanship shall be subject to inspection, examination and testing by the Owner, the A/E, the Project Inspector, authorized inspectors and authorized independent testing entities at any and all times during manufacture and/or construction. The A/E and the Owner shall have authority to reject Defective Work and non-conforming material and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefore, and the CM shall promptly segregate and remove the rejected material from the Site. If the CM fails to proceed at once with replacement of rejected material and/or the correction of Defective Work, the Owner may replace such material and/or correct such Work and charge the cost to the CM, or may terminate the Contract as provided in Section 41 of these General Conditions, the CM and surety being liable for any damage to the same extent as provided in Section 41 for termination thereunder.
- b. Site inspections, tests conducted on Site and tests of materials gathered on Site which the Contract requires to be performed by independent testing entities shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast-in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings, and steel framing connections. The CM shall promptly furnish, without additional charge, all reasonable facilities, labor, and materials necessary and convenient for making such tests. Except as provided in (d) below, whenever such

examination and testing finds Defective Work or non-conforming materials or equipment, the CM shall reimburse the Owner for the cost of reexamination and retesting. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If fees are charged for such tests and certifications, they shall be paid by the CM. The CM shall also pay for all inspections, tests, and certifications which the Contract specifically requires the CM to perform or to pay, together with any inspections and tests which it chooses to perform for its own purposes, but which are not required by the Contract.

- c. Where Work is related to or dependent on Defective Work, the CM shall stop such related or dependent Work until the Defective Work is corrected or an alternative solution is presented that is satisfactory to the Owner. Where Work is rejected as Defective the CM shall stop like Work in other areas or locations on the Project until the Owner has approved corrective measures.
- d. Should it be considered necessary or advisable by the Owner or the A/E at any time before the Final Completion Date to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the CM shall promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be Defective in any respect, the CM shall bear all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction and correction of the Defective Work. If, however, such Work is found to meet the requirements of the Contract, the actual cost of the CM's labor and material necessarily involved in uncovering the Work, the cost of examination and testing, and CM's cost of material and labor necessary for replacement of the examined Work including a markup of fifteen (15%) percent for overhead and profit, shall be paid to the CM and, if the Contract Completion Date was delayed thereby, a time extension equivalent to the impact on the Critical Path shall be issued by Change Order. Notwithstanding the foregoing, the CM shall be responsible for all costs and expenses in removing and replacing the Work if the CM had covered the Work prior to any inspection or test required by the Contract Documents or contrary to the instructions of the A/E, Owner, Project Inspector, or Building Official.

The Project Inspector has the authority to recommend to the A/E and the Owner that the Work be suspended when in his or her judgment the Contract Documents are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the CM unless it is later determined that the Work in question was in full compliance with the Contract Documents.

- e. The Project Inspector has the right and the authority to:
  - Inspect all construction materials, equipment, and supplies for quality and for compliance with the Contract Documents and/or approved Shop Drawings and Submittals;
  - Inspect workmanship for compliance with the standards described in the Contract Documents;
  - Observe and report on all tests and inspections performed by the CM;
  - Recommend rejection of Work which does not conform to requirements of the Contract Documents or is Defective;
  - Keep a record of construction activities, tests, inspections, and reports;
  - Attend all Site construction meetings and inspections held by the Owner and/or the A/E with the CM;
  - Check materials and equipment, together with documentation related thereto, delivered for conformance with approved Submittals and the Contract;
  - Check installations for proper workmanship and conformance with Shop Drawings and installation instructions;
  - Assist in the review and verification of the Form CO-12, Schedule of Values and Certificate for Payment, submitted by the CM each month; and/or

- Do all things for or on behalf of the Owner as the Owner may direct in writing.
- f. The Project Inspector has no authority to:
  - Authorize deviations from the Contract Documents;
  - Enter into the area of responsibility of the CM's superintendent;
  - Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures unless specifically required by the Contract Documents or in regard to safety precautions and programs in connection with the Work;
  - Authorize or suggest that the Owner occupy the Project, in whole or in part; and/or
  - Issue a certificate for payment.
- g. The duties of the Project Inspector are for the benefit of the Owner only and not for the CM. The CM may not rely upon any act, statement, or failure to act on the part of the Project Inspector, nor shall the failure of the Project Inspector to properly perform his or her duties in any way excuse Defective Work, improper performance of the Work, or noncompliance with the Contract Documents by the CM.

#### 17. SUPERINTENDENCE BY CM

- a. The CM shall have a competent foreman or superintendent, satisfactory to the A/E and the Owner, on the Site at all times during the performance of the Work. The superintendent shall be familiar with and be able to read and understand the Contract Documents and be capable of communicating verbally and in writing with the Owner's representatives, the A/E, and the CM's workers. The CM shall be responsible for all construction means, methods, techniques, sequences, and procedures, for coordinating all portions of the Work except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The CM shall notify the Owner, in writing, of any proposed change in foreman or superintendent, including the reason therefore, prior to making such change.
- b. The CM 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 her, or anyone who will not work in harmony with those employed by the CM, the Subcontractors, the Owner or the Owner's separate contractors and their subcontractors or anyone who will not interact appropriately with the public.
- c. The Owner may, in writing, require the CM to remove from the Site any employee or Subcontractor's employee the Owner deems to be incompetent, careless, not working in harmony with others on the Site, not interacting appropriately with the public, or otherwise objectionable, but the Owner shall have no obligation to do so.

#### 18. CONSTRUCTION SUPERVISION, METHODS AND PROCEDURES

- a. The CM 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 CM shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work, except where otherwise specified in the Contract Documents. The CM 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 expressly required by the Contract. The CM is solely responsible to the Owner that the finished Work complies with the Contract Documents.
- b. The CM 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 A/E, the Project Inspector, the Owner, the Owner's employees and agents, or

any other Person shall relieve the CM from its sole responsibility for compliance with the requirements of the Contract and its sole responsibility for health and safety programs and precautions for the Work.

- c. If a specific means, method, technique, sequence, or procedure of construction is indicated in or required by the Contract Documents, the CM may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the A/E, subject to the Owner's right to disapprove. The CM must submit its written request for the substitution to the A/E with sufficient information to allow the A/E to determine that the substitute proposed is equivalent to that indicated or required by the Contract.
- d. The Plans and Specifications are divided into several parts, or sections, for convenience only and because the entirety of the Plans and Specifications must be considered and construed as a whole. The divisions of the Plans and Specifications are not intended to control the CM in dividing the Work among Subcontractors or to limit the Work performed by any trade. The CM shall be solely responsible for the coordination of the trades, Subcontractors, and vendors engaged in the Work and for the compensation of the trades, Subcontractors, and vendors for the Work performed.

## 19. SCHEDULE OF THE WORK

- a. **General:** The CM 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 to finish on or before the Contract Completion Date. The CM may attempt to achieve Substantial Completion before the Contract Completion Date and receive payment in accordance with Section 36 for the Work completed each period. However, the Contract Completion Date shall be used in all schedules and schedule updates as the deadline for which Substantial Completion is to be achieved. The time (in Days) between the CM's planned early completion and the Contract Completion Date is part of the Float. Extensions of time allowed pursuant to Sections 38, 39, and 43, the determination of any compensation for compensable delay, and all other matters between the Owner and the CM will be determined using the Contract Completion Date, not an earlier Substantial Completion date planned by the CM.

Within two (2) weeks after the CM signs the Contract, unless otherwise extended by the Owner at the time of the signing, the CM shall prepare and submit to the Owner, with a copy to the A/E, a schedule for achieving Substantial Completion by the Contract Completion Date. The preliminary schedule shall be in sufficient detail to show the sequencing of the various trades for each floor level, wing or work area. The Owner will notify the CM of any comments on the preliminary schedule within fifteen (15) Days of receipt by the Owner.

A fully complete Project schedule meeting the requirements set forth below in subparagraph (1) or (2), as applicable, must be submitted no later than sixty (60) Days after the Contract is signed by the Owner.

- 1. For Contracts with a Contract Price less than \$1,500,000, a "critical path method", or bar graph schedule may be utilized. The schedule shall indicate the estimated starting and completion dates for each major element of the work and satisfy the requirements of Section 19(b) below.
- 2. For Contracts with a Contract Price of \$1,500,000 or more, a "critical path method" schedule shall be utilized to control the planning and scheduling of the Work. The "critical path method" schedule shall be the responsibility of the CM and shall be paid for by the CM and shall satisfy the requirements of Section 19(c) below.

It is the CM's responsibility to submit a schedule that shows Substantial Completion of the Work by the Contract Completion Date and completion of any portions of the Work by any interim deadlines established by the Contract.



The CM shall allow sufficient time in the schedule for the A/E to conduct all reviews and inspections required under the A/E Contract with the Owner. If the A/E and the CM are unable to agree as to what constitutes sufficient time, the Owner shall determine the appropriate duration for such A/E activities.

The Owner and A/E review schedules and schedule-related submittals solely for compliance with the requirements of this Section. The Owner's failure to reject or its acceptance of any schedule, graph, chart, recovery schedule, updated schedule, plan of action, monthly status report, or similar schedule-related submittals, shall not constitute a representation, admission, or warranty by the Owner, including but not limited to a representation, admission, or warranty that the schedule is feasible or practical or that contents therein are true or accurate, nor shall any such acceptance or failure to reject relieve the CM from sole responsibility for completing the Work by the Contract Completion Date.

No progress payments will be payable to the CM until after it has submitted a preliminary schedule which is acceptable to the Owner. Neither the second progress payment nor any subsequent payment shall be payable to the CM until it has submitted a fully complete Project schedule accepted by the Owner. No subsequent progress payments will be payable to the CM unless it submits each monthly Project report required by Section 19(d) in a form accepted by Owner and each recovery schedule required by Owner pursuant to Section 19(e).

Failure to provide a satisfactory preliminary schedule, fully complete Project schedule, or monthly Project report within the time limits stated above shall be a material breach for which the Owner may terminate the Contract in the manner provided in Section 41 of these General Conditions.

- b. **Bar Graph Schedule:** Where a bar graph schedule is allowed, it shall be time-scaled in weekly increments, shall indicate the estimated starting and completion dates for each major element of the Work by trade and by area, level, or zone, and shall schedule dates for all salient features and activities, including but not limited to the placing of orders for materials, submission of Shop Drawings and other Submittals for review, approval of Shop Drawings and Submittals by A/E, the manufacture and delivery of material, the testing and the installation of materials, supplies and equipment, and all Work activities to be performed by the CM. Each Work activity will be assigned a duration by the CM. One Day shall be the time unit used. The bar graph shall establish and show the Critical Path for the Work.
- c. **Critical Path Method Schedule:** Where a Critical Path method schedule is required, it shall be in the time-scaled precedence format using the CM's logic and time estimates. The Critical Path method schedule shall be drawn or plotted with activities grouped or zoned by Work area or Subcontract rather than random (or scattered) format.

The Critical Path method schedule shall be time-scaled on a weekly basis and shall be drawn or plotted at a level of detail and logic which will schedule all salient features and activities of the Work, including not only the actual construction Work for each trade, but also the submission of Shop Drawings and Submittals for review, approval of Shop Drawings and Submittals by the A/E, placing of orders for materials, the manufacture and delivery of materials, the testing and installation of materials and equipment, and all Work activities to be performed by the CM. The Critical Path method schedule shall have no line-item activities longer than thirty (30) Days in duration, and activities shall be included to provide sufficient detail for effectively managing the sequence of the Work. Failure to include any element of Work required for the performance of this Contract shall not excuse the CM from completing all Work required within the Time for Completion and by the Contract Completion Date and any interim deadlines established by the Contract. Each Work activity will be assigned a duration by the CM.

When completed, the Critical Path method schedule shall be submitted to the A/E and the Owner for review. The Critical Path method schedule will identify and describe each activity; state the

duration of each activity; the calendar dates for the early and late start and the early and late finish of each activity; any constraints placed upon the activity; and clearly depict all activities on the Critical Path for the Work. Float and Free Float shall be indicated for all activities. Float, whether Free Float or Total Float, shall not be considered for the exclusive use or benefit of either the Owner or the CM, but must be allocated in the best interest of completing the Work by the Contract Completion Date.

On contracts with a price over \$5,000,000, each activity on the Critical Path method schedule shall also be attributable to, and correlate with, each activity on the Schedule of Values, the sum of which for all activities shall equal the Contract Price.

When accepted by the Owner and the A/E as compliant with the requirements of this Section, the schedule shall become the baseline Critical Path method schedule for the Project. Acceptance of the schedule by the Owner does not indicate agreement with, or responsibility for, the proposed or actual duration of any activity or logic shown on the accepted schedule.

- d. **Monthly Project Reports:** The CM shall review progress of the Work not less than each month, but as often as necessary to properly manage the Project and stay on schedule to finish before the Contract Completion Date. The CM shall collect and preserve information on Change Orders, including extensions of time. The CM shall evaluate this information and update the latest accepted schedule as often as necessary to finish before the Contract Completion Date. The CM shall submit to the A/E along with each Certificate for Payment a copy of the bar graph schedule annotated to show the current progress or, for projects requiring a Critical Path method schedule, a monthly report of the status of all activities. The bar graph schedule or monthly status report submitted with each Certificate for Payment shall show the Work completed to date in comparison with the Work scheduled for completion, including but not limited to the dates for the beginning and completion of the placing of orders and the manufacture, testing and installation of materials, supplies and equipment. The form for these reports shall be approved by the A/E and the Owner prior to submission of the first Certificate for Payment. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the CM must indicate in writing in the report what measures it is taking and plans to take to bring each such element back on schedule and to ensure that the Work is completed before the Contract Completion Date.
- e. **Progress Delay:** Should any of the following conditions exist, the Owner may require that the CM prepare, at no extra cost to the Owner, a plan of action and a recovery schedule for completing the Work by the Contract Completion Date:
  1. The CM's monthly project report indicates delays that, in the judgment of the A/E or the Owner, call into question the CM's ability to complete the Work by the Contract Completion Date;
  2. The Critical Path method schedule sorted by early finish dates shows the CM to be thirty (30) or more Days behind on the Critical Path schedule at any time during the Work, up to thirty (30) Days prior to the Contract Completion Date;
  3. The CM desires to make changes in the logic or sequencing of Work activities or the planned duration of future activities of the Critical Path method schedule which, in the judgment of the A/E or the Owner, are of a significant departure from those of the baseline schedule or prior schedule updates.

The plan of action and recovery schedule, when required, shall contain a narrative explanation and display how the CM intends to regain compliance with the most current and Owner accepted Critical Path method schedule, as updated with approved Change Orders, if any.

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

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

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

## 20. SCHEDULE OF VALUES AND CERTIFICATE FOR PAYMENT

- a. Before submittal of the first Certificate for Payment, the CM shall prepare for review and approval of the A/E and the Owner the Schedule of Values listed by trades or by Specifications sections for the Work, the total for which equals or is less than the GMP. Where the Work has multiple parts or phases, the CM shall prepare appropriate Schedules of Values to facilitate reviews of Certificate for Payment submitted for each part or phase.

All Certificates for Payment shall be made in the ASTM Unifomat II structure on the Form CO-12, Schedule of Values and Certificate for Payment.

- b. If the CM requests, or intends to request, payment for materials stored in an approved and secure manner, the Schedule of Values must indicate the amount for labor and the amount for materials, and in a supplement thereto must include an itemized list of materials for that trade or Work section. The material breakdown shall be in sufficient detail to allow verification of the quantities required for the Project, the quantities delivered, the Work completed, and the quantities stored on or off-Site.
- c. The CM shall complete the "Value of Work Completed" portion of the Form CO-12, complete and sign the CM's certification, and attach all substantiating material to each Certificate for Payment. Such substantiating material includes, but is not limited to, invoices for materials, delivery tickets, timesheets, payroll records, daily job logs/records, and similar materials which, in the opinion of the Owner and the A/E, are necessary or sufficient to justify payment of the amount requested.
- d. The labor progress for any task or activity shall be calculated based upon the percentage of Work complete up to fifty percent (50%) of the completion of the task or activity. Thereafter, the evaluation of labor progress will be based upon the effort required to complete that task or activity. The material progress shall be calculated as the invoiced dollar cost of materials used in relation to the amount estimated as necessary to complete a particular element of Work. When calculating material progress, credit shall be given for installed material as well as that stored on

the Site and any material stored off-Site which has been certified by the A/E in accordance with Section 36 of these General Conditions.

- e. Should Work included in previous Certificates for Payment, and for which payment has been made, subsequently be identified by tests, inspection, or other means, as Defective or not acceptable or not conforming to the Contract Documents, the "Value of Work Completed" portion of the first Certificate for Payment submitted after such identification shall be modified to reduce the "completed" value of that Work to a percentage reflecting only that work which is not Defective or nonconforming.

## **21. ACCESS TO WORK**

The A/E, the Owner, the Project Manager, the Owner's inspectors and other testing personnel, the Building Official, inspectors from the Department of Labor and Industry, and others authorized by the Owner, shall have access to the Work at all times. The CM shall provide proper facilities for access and inspection.

## **22. SURVEYS AND LAYOUT**

- a. The Owner shall furnish the CM documents showing property lines and the location of existing buildings and improvements at the Site. The CM shall provide competent surveying and engineering services to execute the Work and shall be responsible for the accuracy of those surveying and engineering services.
- b. The Owner shall provide the general reference points and benchmarks on the Site as required of it by the Plans and Specifications. If the CM finds that any previously established reference points have been lost or destroyed, it shall promptly notify the A/E.
- c. The CM shall protect and preserve the established benchmarks and monuments and shall make no changes in locations without prior written Notice to the A/E and prior written approval from the Owner. Benchmarks and monuments that are lost or destroyed or which require shifting because of necessary changes in grades or locations shall, subject to prior written approval of the Owner, be replaced, and accurately located by the CM.

## **23. PLANS AND SPECIFICATIONS**

- a. The general character and scope of the Work are illustrated and described by the Plans and the Specifications. If the CM deems additional detail or information to be needed, the CM shall request the same in writing from the A/E. The request shall precisely state the detail or information needed and shall explain why it is needed. The CM shall also indicate a date by which the requested information is required. The A/E shall provide by Field Order such further detail and information as is necessary by the date required so long as the date indicated is reasonable. Any additional drawings and instructions supplied to the CM shall be consistent with the Contract Documents, shall be true developments thereof, and shall be so prepared that they can be reasonably interpreted as a part thereof. The CM shall carry out the Work in accordance with the additional detail drawings and instructions at no additional cost to the Owner and with no time extension.
- b. If the CM finds a conflict, error, omission, or other discrepancy in the Plans or Specifications, it shall notify the A/E in writing as soon as possible, but before proceeding with any Work that is or may be impacted by the matter. The A/E shall issue a clarification by Field Order to the CM stating the correct requirements. If the CM deems the Field Order requires additional or extra Work, it shall provide Notice of its request for additional time and/or compensation to the Owner and A/E prior to proceeding with that Work. The CM also shall submit a request for Change Order along with a detailed substantiating cost proposal through the A/E to the Owner within fourteen (14) Days of the receipt of the Field Order or before proceeding with the Work, whichever is earlier.

- c. If a conflict, error, omission or other discrepancy in Plans or Specifications was reasonably apparent or with reasonable diligence should have been apparent to the CM prior to submitting its bid or Proposal, and the CM failed to submit a question to the A/E in the time and manner required by the Instructions to Bidders, then the CM shall not be entitled to additional compensation or time or entitled to bring a claim against the Owner based on such conflict, error, omission or other discrepancy. If the CM performs any Work, or is delayed in performing any Work, where such Work involves a conflict, error, omission, or other discrepancy in the Plans or Specifications that the CM knew about, or with reasonable diligence should have known about, for which the CM failed to provide Notice to the A/E and Owner as required, the CM shall assume full responsibility for the Work or delay and shall bear all costs attributable to correcting any Work requiring correction or to any delay, and such conflict, error, omission, or other discrepancy shall not be the basis for a claim against or any recovery from the Owner.
- d. In case of differences between a small and large scale Drawing, the large scale Drawing shall govern. Where on a Drawing a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work.
- e. Where the word “similar” appears on a Drawing, it shall be interpreted in its general sense and not as meaning “identical,” and all details shall be worked out in relation to their location and their connection with other parts of the Work.
- f. Measurements or dimensions shown on the Drawing for Site features, utilities, buildings, structures, or improvements shall be verified at the Site by the CM before commencing the Work. The CM shall not scale measurements or dimensions from a Drawing. If there are discrepancies among Drawings or the Plans, the CM shall notify and request clarification from the A/E before proceeding with the impacted Work. If new Work is to connect to, match with or be provided in existing facilities, buildings, or improvements, the CM shall verify the actual existing conditions and necessary dimensions prior to ordering or fabrication of materials or construction.
- g. **As-Built Drawings:** The CM shall maintain at the Site for the Owner one copy of the As-Built Drawings in good order and marked to record all changes as they occur during construction. These shall be available to the A/E, the Owner, the Project Inspector, the Owner’s other inspectors and to the Owner’s testing personnel.
- h. **Preparation of Record Drawings:** Upon completion of the Work and prior to the final inspection, the CM shall deliver to the A/E, for preparation of the Record Drawings, one complete set of As-Built Drawings depicting the Work in its as-built condition at Final Completion.

#### 24. SUBMITTALS AND PROJECT RECORDS

- a. The CM shall submit a listing of all Submittals required by the A/E or which the CM identifies as necessary, stating the dates for the submission of each Submittal. The listing shall be in a format acceptable to the A/E. The CM shall identify all Submittals with the Owner’s Project Code Number as required by Section 24(e).
- b. Submittals shall be forwarded to the A/E for approval if required by the Specifications or if requested by the A/E or the Owner. No part of the Work dealt with by a Submittal shall be ordered, fabricated, or installed by the CM, except at its own risk, until the Submittal for that Work has been approved.

Working drawings, Shop Drawings and/or Submittals for fire protection, fire alarm, fire detection, and security systems shall be submitted to, and approved by, first the A/E and then the Building Official prior to ordering, fabricating, or installing such systems. The CM shall be solely responsible for obtaining such approvals. No part of the Work involving such systems shall be ordered, fabricated, or installed by the CM until such approvals have been obtained.

- c. The CM shall furnish to the A/E 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 CM contemplates incorporating in the Work. When Submittals are required by this Contract for materials, the CM shall furnish full information concerning the material or articles which the CM intends to incorporate in the Work. When required, samples shall be submitted for approval at the CM's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.
- d. Unless otherwise indicated or required by the Specifications, Shop Drawings shall be submitted in the form of one reproducible tracing and three blue-line or black-line prints. Catalog cuts, product data and other non-reproducible literature, except certificates, shall be submitted in six (6) copies minimum, of which three (3) will be retained by the A/E and the remainder will be returned to the CM. The CM shall maintain one copy of all approved Shop Drawings and Submittals in the construction trailer for use by inspectors. If agreed by the Owner, A/E, and CM, Submittals may be provided in electronic format in lieu of hardcopy format.
- e. Submittals shall be accompanied by a letter of transmittal which shall list the Project Code Number, the Submittals included, and the date. 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 Work. Each Submittal shall contain specific references to the sections of the Plans and Specifications to which the item or component that is the subject of the Submittal relates.
- f. The CM shall check Submittals for compliance with the requirements of the Contract Documents. The CM shall clearly note in writing any and all items which deviate from the requirements of the Contract Documents. Reasons for deviation shall be included with the Submittal. The CM shall be solely responsible for checking all dimensions and coordinating all materials and trades to ensure that the components or products proposed, individually or in combination, will fit in the space available and that they will be compatible with other components or products provided.
- g. After checking each Submittal, the CM shall stamp each sheet of the Submittal with the CM's review stamp. Data submitted in a bound volume or on one sheet printed on two sides, may be stamped on the front of the first sheet only. The CM's review stamp shall be worded as follows:

The equipment and material shown and marked in this Submittal is proposed to be incorporated into this Project, is in compliance with the Contract Plans and Specifications unless otherwise shown in bold-face type or lettering and listed on a page or pages captioned "**DEPARTURES FROM PLANS AND SPECIFICATIONS**", and can be installed in the allocated spaces.

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

The person signing the review stamp shall be the person designated in writing by the CM as having that authority. The identity of such individual shall be forwarded to the A/E prior to or with the first Submittal. The signature on the review stamp shall be handwritten in ink, or in the case of electronic submittals, electronically signed in accordance with *Code of Virginia*, § 59.1-479 *et seq.* Stamped signatures are not acceptable.

- h. The CM shall forward all Submittals sufficiently in advance of construction activities and requirements to allow sufficient time for checking, correcting, resubmitting, and rechecking each Submittal.
- i. If a Submittal indicates a departure from the Contract Documents, the A/E may reject the Submittal or recommend it to the Owner, who shall approve or reject it as the Owner, in its sole

discretion, sees fit. Any departure from the Contract Documents must be authorized by a Change Order if it results in adjustment of the Contract Price or the Contract Completion Date.

- j. The A/E is responsible to the Owner, but not to the CM, to verify that the information, equipment and materials depicted in Submittals conform to the design concept and functional requirements of the Plans and Specifications, that the detailed design portrayed in Shop Drawings and proposed equipment and materials shown in Submittals are of the quality specified and will function properly, and that the Submittals comply with the Contract Documents.
- k. The Work shall be in accordance with approved Submittals. Approval of the CM's Submittals by the A/E does not relieve the CM from responsibility for complying with the Contract Documents.
- l. The Plans and/or Specifications may indicate that the A/E designed or detailed a portion of the Work-around a particular product. Should a different product be proposed by the CM and accepted, all modifications, rerouting, relocations and variations required for proper installation and coordination to comply with the design concept and requirements of the Contract Documents shall be the responsibility of the CM and shall be made at no extra cost to the Owner. If the plans were noted as designed or detailed around a particular product and/or if a product is named when a "brand name or equal" requirement has been used, other products may be utilized following Section 26 of these General Conditions.
- m. Additional Submittal requirements are shown in the Specifications.
- n. Ownership of all materials and documentation including Shop Drawings, BIM models, copies of any calculations and analyses prepared and other Project-specific details of building components created during the Submittal process shall belong exclusively to the Owner. These materials and documentation, whether completed or not, shall be the property of the Commonwealth of Virginia, whether the Work for which they are made is executed or not. The CM shall not use these materials on any other work or release any information about these materials without the express written consent of the Owner.
- o. Such material may be subject to public inspection in accordance with the Virginia Freedom of Information Act. Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to disclosure under the Virginia Freedom of Information Act, provided the bidder, offeror, or contractor timely invoked the protections of *Code of Virginia*, § 2.2-4342(F).
- p. The CM shall maintain comprehensive records of all documentation produced in the performance of the Work and maintain a records management system to provide for document tracking, organization, storage and archiving of such documentation. The CM's records management system shall provide for the electronic storage and transmission of documents and information through one or more of the following methods: (1) web accessible project management software; (2) electronic files shared utilizing removable electronic media; or (3) in such manner agreed to by the Owner and CM. Such records shall be retained by the CM for a period of five (5) years following the Final Completion Date. The CM shall make the project documentation available to the Owner within five (5) Days of request in an orderly, indexed manner to allow individual documents to be easily located and reviewed. The CM shall ensure all documentation is kept current and stored in the records management system in a timely manner.
- q. The CM's Project documentation shall include regular construction photographs to show progress of the Work and items that may be the subject of CM or Subcontractor claims. The photographer shall label each photograph with, at a minimum, the Project name, building name/number, City, State, name of Contractor/Subcontractor(s) whose work is depicted, date and time the photograph was taken, description of weather conditions, subject matter and viewpoint of the photograph, name of the photographer, and the names of any observers.

## 25. FEES, SERVICES AND FACILITIES

- a. The CM shall obtain all permits, except the Building Permit, and pay for all fees and charges necessary for temporary access, public right-of-way blockage or use, temporary connections to utilities, and the use of property (other than the Site) for storage of materials and other purposes, unless otherwise specifically stated in the Contract Documents.
- b. Certain projects such as renovations and interior modifications of existing buildings will usually have water and electric service to the building. In those instances, water and electric power, if required for the Work under the Contract, will be furnished by the Owner subject to reasonable use by the CM, but only to the extent and capacity of present services. The CM 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 CM of the use of Owner's water and electricity constitutes a release to the Owner of all claims and of all liability to the CM for any damages which may result from the use of such utilities and power and water outages or voltage variations.
- c. The Owner shall pay any connection charges for permanent utility connections directly to the utility Supplier. The CM shall coordinate such connections with the utility Supplier.
- d. It is understood that, except as otherwise specifically stated in the Contract Documents, the CM, either directly or through its 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 before the Contract Completion Date.
- e. The CM shall provide all required temporary facilities, including CM's office space, Owner's Project Inspector's office space (if required by the Specifications), sanitary facilities, and storage space, as required for the operations and the protection of the materials and the Work. Number, sizes, and locations shall be subject to approval of the Owner. Sanitary facilities shall be plumbed into an approved waste treatment system or shall be an approved type of chemical toilet and shall be regularly serviced.
- f. Use and occupancy of the construction site as the Owner's Project Inspector's office or as a work or meeting space for other than contractor employees prior to receipt of a Certificate of Use and Occupancy is prohibited.

## 26. EQUALS

- a. **Brand names:** Unless otherwise stated in the Specifications, the identification of a certain brand, make or manufacturer denotes the characteristics, quality, workmanship, economy of operation and suitability for the intended purpose of the article to be supplied, but does not restrict the CM to the specific brand, make, or manufacturer indicated. Rather, the information conveys to the CM the general style, type, character and quality of the article to be supplied.
- 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 A/E is the equal of that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work, and suitability for the intended purpose, will be accepted unless rejected by the Owner as not being equal.



- c. **Substitute materials, equipment, or assemblies:** The CM may propose to substitute a material, product, equipment, or assembly which deviates from the requirements of the Contract Documents but which the CM deems will perform the same function and have equal capabilities, service life, economy of operations, and suitability for the intended purpose. The proposal must include any cost differentials proposed. The Owner will have the A/E provide an initial evaluation of such proposed substitutes and provide a recommendation on acceptability and indicate the A/E's redesign fee to incorporate the substitution into the Contract Documents. The Owner shall have the right to limit or reject substitutions at its sole discretion.
- d. The CM shall be responsible for making all changes in the Work necessary to adapt and accommodate any equal or substitute product approved for use by Owner. The necessary changes shall be made at the CM's expense.

## 27. AVAILABILITY OF MATERIALS

If a brand name, material, product, or model number included in the Contract Documents is not available on the present market, alternate equal materials, products, or model numbers may be proposed by the CM through the A/E for approval by the Owner through the process set forth in Section 26.

## 28. CONSTRUCTION MANAGER'S TITLE TO MATERIALS

No materials or supplies for the Work shall be purchased by the CM, 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 in the materials or supplies is retained by the seller or is given to a secured party. The CM warrants that it has clear and good title to all materials and supplies used in the Work or for which the CM accepts payment in whole or in part.

## 29. QUALITY & STANDARDS

- a. Unless otherwise specifically provided in the Contract, all equipment, material, and accessories incorporated in the Work are to be new or Recycled and in first-class condition.
- b. Unless specifically approved by the Owner or required by the Contract, the CM 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, or harmful to other building components, materials, or products. If the CM becomes aware that a material required by the Contract contains asbestos or other hazardous or harmful materials, it shall notify the Owner and the A/E immediately and shall take no further steps to acquire or install any such material without first obtaining Owner approval.
- c. All workmanship shall be of the highest quality found in the building industry in every respect. All items of Work shall be done by Persons 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 Persons performing the Work. Poor or inferior workmanship (as determined by the A/E, the Owner or other inspecting authorities) shall be removed and replaced at CM's expense such that the Work conforms to the highest quality standards of the trades concerned, or otherwise corrected to the satisfaction of the A/E, the Owner, and other inspecting authority, as applicable.
- d. Where materials, supplies or equipment 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 items shall be in strict accordance with the manufacturer's printed instructions unless those instructions contradict the Plans or Specifications, in which case the CM shall notify the A/E of the inconsistency and obtain written guidance from the A/E before proceeding with any Work involving the item.

- e. Where the Specifications or Plans refer 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. CMs 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 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 of specific items, or where there is uncertainty on the part of the CM concerning the installation procedures to be followed or the quality of workmanship to be maintained in the installation of specific items, the CM shall consult, in advance, with the A/E for approval of the installation procedures or the specific standards governing the quality of workmanship the CM 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 CM 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 CM 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 CM warrants that, unless otherwise specified, all materials and equipment incorporated in the Work shall be new or Recycled, in first-class condition, and in accordance with the Contract Documents. The CM further warrants that the Work 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 CM's other guarantees and obligations in the Contract Documents and under Virginia law.

### **31. USE OF SITE & REMOVAL OF DEBRIS**

- a. The CM 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 its apparatus, materials, Supplies and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of its 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 CM expressly undertakes, either directly or through its 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 A/E, not to cut or otherwise alter the work of any other separate contractor. The CM shall not damage or endanger any portion of the Work or Site, including existing improvements, unless called for by the Contract.

- c. The CM expressly undertakes, either directly or through its Subcontractor(s), to clean up frequently all refuse, rubbish, scrap materials and debris caused by its operations, to ensure that at all times the Site shall present a neat, orderly, and workmanlike appearance. No refuse, rubbish, scrap material, or debris shall be left within the completed Work nor buried on the Site, but shall be removed from the Site and properly disposed of in a licensed landfill or otherwise as required by law.
- d. The CM expressly undertakes, either directly or through its Subcontractor(s), before Final Payment or such prior time as the Owner may require: to remove all surplus material, false Work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from its 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; and to clean thoroughly all glass installed under the Contract, including the removal of all paint and mortar splatters and other defacements.

If the CM fails to clean up as required herein, the Owner may do so and charge the costs incurred thereby to the CM in accordance with Section 10 (b).

- e. The CM shall have, on-Site, an employee certified by the Department of Environmental Quality as a Responsible Land Disturber who shall be responsible for the installation, inspection, and maintenance of erosion control and stormwater management measures and devices. The CM shall identify this employee to the Owner and the A/E in writing prior to any land disturbance on Site. The CM shall prevent Site soil erosion, the runoff of silt and/or debris carrying water from the Site, and the blowing of debris off the Site in accordance with the applicable requirements and standards of the Contract and the Virginia Department of Environmental Quality's Erosion and Sediment Control Regulations and the Virginia 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 written permission is received from the Owner to bury the same at a location and depth approved by the Owner.

## **33. SIGNS**

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

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

- a. The CM expressly undertakes both directly and through its Subcontractors, to take every reasonable precaution at all times for the protection of all Persons and property at or near the Site or which may be affected by the CM's Work.
- b. The CM shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Any violation of safety requirements or duties or any potential safety hazard that is known to the CM or which is brought to the attention of the CM by the A/E, the Owner, or any other Persons shall be immediately abated.

- c. The provisions of all rules and regulations governing health and safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the *Code of Virginia*, shall apply to all Work under this Contract.
- d. The CM shall continuously maintain adequate protection of all the Work and Site from damage and shall protect the Owner's property from injury or loss arising in connection with the Work. The CM shall make good any damage, injury or loss caused by its operations or the Work, except as may be directly and solely due to errors in the Contract Documents or caused by agents or employees of the Owner. The CM shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. The CM shall provide and maintain all passageways, guard fences, lights and other facilities for protection of Persons and the Site and the Work as required by public authority, local conditions, or the Contract.
- e. In an emergency affecting the health, safety, or life of Persons, or threatening loss or damage to the Work or adjoining property, the CM, without special instruction or authorization from the A/E or the Owner, shall act promptly, at its discretion, to prevent such threatened loss or injury. The CM shall carry out any instructions or directives issued by the A/E or Owner, to prevent threatened loss or injury, immediately, without appeal. Any additional compensation or extension of time claimed by the CM on account of any emergency actions or measures shall be submitted and determined as provided by Section 38.
- f. When necessary for the proper protection of the Work, temporary heating of a type compatible with the Work must be provided by the CM, at the CM's expense, unless otherwise specified.

### 35. CLIMATIC CONDITIONS

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

### 36. PAYMENTS TO CONSTRUCTION MANAGER

- a. Unless otherwise provided in the Contract, the Owner will make partial payments to the CM on the basis of a duly certified and approved Schedule of Values and Certificate for Payment (CO-12), showing the estimate of the Work performed during the preceding calendar month or work period, as recommended by the A/E. When evaluating the CM's Certificate for Payment, the A/E will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work in relation to the Contract Completion Date, and the estimated value of the Work remaining to achieve Final Completion. The A/E will schedule a monthly pay meeting to occur no earlier than the 25th day of the month represented by the Certificate for Payment and no later than the 5th day of the following month. The CM shall submit its Certificate for Payment so that it is received by the A/E and the Owner's Project Manager at least one work day prior to the date scheduled by the A/E for the monthly pay meeting. The Owner will review the estimate with the A/E and the CM at the monthly pay meeting, which shall be considered the receipt date, and may approve to pay any or all of the Certificate for Payment. In preparing estimates, the material delivered to the Site and preparatory Work done shall be taken into consideration, if properly documented as required by Section 20 of these General Conditions, or as may be required by the A/E, so that actual quantities supplied or performed may be verified. Materials or equipment purchased specifically for the Project, but stored off the Site within the Commonwealth of Virginia, may be considered for payment provided all of the following are accomplished prior to the submission of the Certificate for Payment in which payment for such item is requested:
  - 1. The CM must notify the Owner in writing, at least ten (10) Days prior to the submission of Certificate for Payment that specific items will be stored off-Site in a designated, secured place within the Commonwealth of Virginia. The Schedule of Values must be detailed to indicate separately both the value of the material and the labor/installation for trades requesting payment for stored materials. By giving such notification and by

requesting payment for material stored off-Site, the CM warrants that the storage location is safe and suitable for the type of material stored and that the materials are identified as being the property of the CM, and agrees that loss of materials stored off the Site shall not relieve the CM of the obligation to timely furnish these materials for the Project and to achieve the Contract Completion Date. If the storage location is more than 20 miles from the Site, the CM may be required to reimburse the Owner for the cost incurred for travel to the storage location by Owner and/or the A/E to verify the CM's Certificate for Payment for materials stored off-Site. A supplementary agreement, acceptable to Owner, shall be required for payment for materials or equipment stored at a location that is not within the Commonwealth of Virginia.

2. CM's notification and Certificate of Payment regarding stored materials shall:
  - a. Itemize the quantity of such materials and document with invoices showing the cost of said materials;
  - b. Indicate the identification markings used on the materials, which shall clearly reference the materials as for the Project;
  - c. Identify the specific location of the materials, which must be within reasonable proximity to the Site and within the Commonwealth of Virginia;
  - d. Include a letter from the CM's Surety which confirms that the Surety on the Performance Bond and the Labor and Material Payment Bond has been notified of the request for payment of materials stored off the Site and agrees that the materials are covered by the bonds; and
  - e. Include documentation establishing that the stored materials are covered by all-risk builder's risk insurance in an amount not less than the fair market value of the materials, which insurance shall include the Owner as an additional insured.
3. The A/E shall indicate, in writing, to the Owner that Submittals for materials stored off-Site have been reviewed and meet the requirements of the Contract Documents, that the stored materials meet the requirements of the Plans and Specifications, and that such materials conform to the approved Submittals. Should the A/E deem it necessary to visit the storage site to make such review, the CM shall bear the costs incurred therewith.
4. The Owner, through the A/E, shall notify the CM in writing of its decision whether to pay for materials stored off-Site.
5. The CM shall notify the Owner in writing, through the A/E, when the materials are to be transferred to the Site and when the materials are received at the Site.
6. The General Conditions Fee, the Construction Manager's Fee, and the Insurance and Taxes Fee, shall be paid incrementally as the Work is performed, as follows:
  - a. Unless otherwise approved by the Owner, the allocable portion of the General Conditions Fee for each progress payment shall be determined by dividing the General Conditions Fee by the total number of months in the Time for Completion to determine a monthly rate allocable to each payment period.
  - b. The allocable portion of the Construction Manager's Fee for each progress payment shall be a percentage which is equivalent to the percentage of completion of the Work in each payment period.
  - c. The portion of the Insurance and Taxes Fee to be paid in each progress payment shall be the value of those costs which actually have been incurred and paid by

the CM, but only if the total prior payment by Owner for costs within the Insurance and Taxes Fee do not exceed the percentage of the Cost of the Work set by the Contract.

- b. Payment will not be made for materials or equipment stored on or off the Site which are not scheduled for incorporation into the Work within the six months next following submission of the Certificate for Payment without the prior written consent of the Owner, which consent may be withheld by the Owner if, in the Owner's sole discretion, it is not necessary to procure the materials more than six months in advance of use to assure their availability when needed.
- c. No payment shall be made to the CM until:
  - 1. The CM furnishes to the Owner its Social Security Number (SSN) (if an individual), or its Federal Employer Identification Number (FEIN), if a proprietorship, partnership, corporation or other legal entity;
  - 2. Certificates of Insurance and required evidence of compliance by the CM with all the requirements of Section 11 (and Section 12, if applicable) have been delivered to the Owner;
  - 3. Certificates of Insurance and required evidence of compliance by each Subcontractor with the requirements of Section 11 and Section 12, if applicable, have been delivered to the Owner for payments based on Work performed by a Subcontractor; and
  - 4. The CM has: (i) submitted a preliminary schedule which is acceptable to the Owner in accordance with Section 19(a); (ii) submitted a fully complete Project schedule accepted by the Owner in accordance with Section 19(a); (iii) submitted all monthly Project reports required by Section 19(d); and (iv) timely provided a recovery schedule pursuant to Section 19(e), if requested by the Owner.
- d. The Owner shall withhold five percent (5%) of each progress payment to the CM shall be retained until the Final Payment, unless otherwise provided by any law, regulation, or program of the federal government. Such retainage shall be held to assure faithful performance of the Contract and may also be used as a fund to deduct amounts due to or claimed by the Owner, including, but not limited to, payment to the Owner of all moneys due for deductive change orders, credits, uncorrected Defective Work, interest, damages, and the like. (*Code of Virginia*, § 2.2-4333). The Owner may, at its sole discretion, agree on an item by item basis to release the retainage on items which are fully 100% complete and which have been accepted by the Owner as being tested and complete and on which no further action or work will be required. Retainage which is released by the Owner shall be distributed by the CM in conformance with Section 37.
- e. All material and Work for which progress payments are made shall thereupon become the sole property of the Owner, but this provision shall not relieve the CM from the sole responsibility for all materials and Work, including those for which payment has been made, or for the restoration of any damaged materials or Defective Work. No payment shall waive any right of the Owner to require CM to fulfill all of the terms and conditions of the Contract Documents.
- f. The Final Payment, which shall include the retainage, less any amounts due to or claimed by the Owner, shall not become due until the A/E and the Owner agree that Final Completion has been achieved and until the CM shall deliver to the Owner through the A/E a Certificate of Completion by the CM (CO-13.2) and an Affidavit of Payment of Claims (CO-13), stating that all Subcontractors and Suppliers of either labor or materials have been paid all sums claimed by them for Work performed and materials furnished in connection with this Project less retainage. Amounts due the Owner which may be withheld from the Final Payment may include, but are not limited to, amounts due pursuant to Section 3(i), Section 16(a)-(d), Section 31(d), costs incurred to repair or replace Defective Work, costs incurred as a result of the CM's negligent acts or

omissions or omissions of those for whom the CM is responsible, delay damages under Section 43(h), and any liquidated or actual damages. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, the CM shall list each to which an agreed amount of money is due or which has a claim in dispute. With respect to all such Subcontractors and Suppliers, the CM shall provide to the Owner, along with the Affidavit of Payment of Claims (CO-13), an affidavit from each such Subcontractor and Supplier stating the amount of their Subcontract or supply contract, the percentage of completion, the amounts paid to them by the CM and the dates of payment, the amount of money still due if any, any interest due the Subcontractor or Supplier, and whether satisfactory arrangements have been made for the payment of said amounts. If no agreement can be reached between the CM and one or more Subcontractors or Suppliers as to the amounts owed to the Subcontractors or Suppliers, the Owner may, in its discretion, interplead such portion of the moneys due to the CM which is claimed by the Subcontractor or Supplier into a Virginia Court or Federal Court sitting in Virginia, in the manner provided by law. Said interpleader and payment into court shall be deemed a payment to the CM. Nothing in this Section shall be construed as creating any obligation or contractual relationship between the Owner and any Subcontractor or Supplier, and the Owner shall not be liable to any Subcontractor or Supplier on account of any failure or delay of the Owner in complying with the terms hereof.

- g. Upon successful completion of the final inspection and all Work required by the Contract, including but not limited to the delivery of Record Drawings, equipment manuals, written warranties, acceptance of the Work by the Owner and the delivery of the affidavits required in Section 36(f), the A/E shall deliver the written Certificate of Completion by the A/E (CO-13.1) to the Owner, with a copy to the CM, stating the entire amount of Work performed and compensation earned by the CM. The Owner may accept the Work for occupancy or use while asserting claims against the CM; disputing the amount of compensation due to the CM; disputing the quality of the Work, disputing Final Completion, disputing CM's compliance with the Contract Documents; or any other reason.
- h. Unless there is a dispute about the compensation due to the CM, Defective Work, quality of the Work, compliance with the Contract Documents, Final Completion, claims by the Owner, other matters in contention between the parties, or unless monies are withheld pursuant to the Comptroller's Debt Setoff Program, within thirty (30) Days after receipt and acceptance of the Certificate for Payment in proper form by the A/E at the monthly pay meeting, the Owner shall pay to the CM the amount approved by the A/E, less all prior payments and advances whatsoever to or for the account of the CM. In the case of Final Payment, the completed Affidavit of Payment of Claims (CO-13), the Certificate of Completion by the CM (CO-13.2), and the Certificate of Completion by the A/E (CO-13.1) shall accompany the final Certificate for Payment which is forwarded to the Owner for payment. The date on which payment is due shall be referred to as the Payment Date. Payment shall be mailed on or before the Payment Date for amounts and Work not in dispute, subject to any set offs claimed by the Owner; provided, however in instances where further appropriations are required by the General Assembly or where the issuance of further bonds is required, in which case, payment shall be made within thirty (30) Days after the effective date of such appropriation or within thirty (30) Days after the receipt of bond proceeds by the Owner. All prior estimates and payments including those relating to extra Work may be corrected and adjusted in any payment and shall be corrected and adjusted in the Final Payment. In the event that any Certificate for Payment contains a defect or impropriety, the Owner shall notify the CM of any defect or impropriety which would prevent payment by the Payment Date, within five (5) Days after receipt of the Certificate for Payment by the Owner from the A/E.
- i. Interest shall accrue on all amounts owed by the Owner to the CM which remain unpaid seven (7) Days following the Payment Date. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in the publication entitled The Wall Street Journal on the weekday following each such Weekly Auction. During the period of time when the amounts due to the CM remain unpaid following the seventh (7) Day after the Payment Date, the interest accruing shall fluctuate on a weekly basis and shall be that established

by the immediately prior Weekly Auction. It shall be the responsibility of the CM to gather and substantiate the applicable weekly interest rates to the satisfaction of the Owner and to calculate to the satisfaction of the Owner the interest due. In no event shall the rate of interest charge exceed the rate of interest charged pursuant to *Code of Virginia*, § 58.1-1812. No interest shall accrue on retainage or when payment is delayed because of a dispute or disagreement between the Owner and the CM regarding the quantity, quality, or timeliness of the Work, including, but not limited to, compliance with Contract Documents or the accuracy of any Certificate for Payment. This exception to the accrual of interest stated in the preceding sentence shall apply only to that portion of a payment which is withheld and shall apply only for the duration of the dispute. Nothing contained herein shall be interpreted, however, to prevent the withholding of retainage to assure faithful performance of the Contract. These same provisions relating to payment of interest to the CM shall apply also to the computation and accrual of interest on any amounts due from the CM to the Owner for deductive change orders and to amounts due on any claims by the Owner. The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee. No interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (*Code of Virginia*, § 2.2-4800 *et seq.*), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate specified above on amounts withheld that remain unpaid after seven Days following the Payment Date. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent per month.

- j. The acceptance by the CM of the Final Payment shall be and operate as a release to the Owner of all claims by the CM, its Subcontractors and Suppliers, and of all liability to the CM whatever, including liability for all things done or furnished in connection with the Work, except for things done or furnished which are the subject of unresolved claims for which the CM has filed a timely written Notice of intent and all other Notices and documentation required by the Contract Documents and provided a claim is submitted no later than sixty (60) Days after Final Payment. Acceptance of any interest paid by the CM shall be a release of the Owner from claims by the CM for late payment.
- k. No Certificate for Payment authorized by the A/E, and no payment, final or otherwise, no certificate of completion, nor partial or entire use or occupancy of the Work by the Owner, shall be an acceptance of any Work or materials not in accordance with the Contract, nor shall the same relieve the CM of responsibility for nonconforming materials or Defective Work or operate to release the CM or its Surety from any obligation under the Contract, the Standard Performance Bond and the Standard Labor and Material Payment Bond.
- l. To the extent the costs incurred by the CM to achieve Final Completion of the Work exceeds the GMP, the CM shall bear all such costs in excess of the GMP without reimbursement or additional compensation from the Owner. The CM solely is responsible for any errors in its estimates, calculations and assumptions in establishing the GMP.

### 37. PAYMENTS BY CONSTRUCTION MANAGER (*CODE OF VIRGINIA*, § 2.2-4354)

Under *Code of Virginia*, § 2.2-4354, the CM is obligated to:

- a. Within seven (7) Days after receipt of amounts paid to the CM by the Owner for Work performed by the Subcontractor or Supplier under this Contract, the CM shall:
  - 1. Pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or the materials furnished by the Supplier under this Contract; or



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

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

### 38. CHANGES IN THE WORK

- a. The Owner may at any time, by written order utilizing the Change Order (CO-11) and without Notice to the sureties, make changes in the Work which are within the general scope of the Contract, except that no change will be made which alone 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. At the time of the Preconstruction Meeting described in Section 50(b), the CM and the Owner shall advise each other in writing of their designees authorized to accept and/or approve Change Orders and of any limits to each designee's authority. Should any designee change or limits of their authority change, the party initiating such change in designee or authority shall give written Notice to the other Party and the A/E within seven (7) Days. The CM agrees and understands that the authority of the Owner's designee is limited by *Code of Virginia*, § 2.2-4309 and any other applicable statute.

Change Orders shall be effective when signed by both parties, unless Governor approval (or by his or her designee) is required, in which event the Change Order shall be effective when signed by the Governor or his or her designee.

The CM has determined the GMP as required by Contract and is bound by it. Any requests for changes to the GMP will be governed by the procedures and requirements of the General Conditions. Where the subcontractor, supplier, or vendor requests a change order to its contract with the CM, such request for Change Order shall also be governed by these General Conditions. No changes to the GMP will be granted solely because a subcontractor, supplier, or vendor has changed its contract with the CM.

In any Change Order adjusting the Contract Price, the increase or decrease in the Contract Price shall be determined by one of the following methods as selected by the Owner:

1. **Fixed Price:** By a mutually agreed fixed amount adjustment to the Contract Price. The Change Order shall be substantiated by documentation from the CM itemizing the estimated quantities and costs of all labor, materials, and equipment required as well as any mark-up used. Any increase in the Contract Price shall include the CM's reasonable overhead and profit, including overhead for any unreasonable delay arising from or

related to the Change Order and/or the change in the Work. See Subsections (d), (e), and (f) below.

2. **Unit Price:** By using unit prices and calculating the number of net units of Work in each part of the Work which is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices.
3. **Cost Reimbursement:** The Owner may require the CM to perform change in the Work on a cost-reimbursement basis by issuing two Change Orders citing this Subsection: (a) an initiating Change Order, authorizing the changed Work; and (b) a confirming Change Order approving any adjustment in the Contract Price or the Contract Completion Date as a result of the change in the Work. The initiating Change Order shall:
  - Describe the scope or parameters of the change in the Work;
  - Describe the cost items to be itemized and verified for payment and the method of measuring the quantity of work performed;
  - Address the impact on the Critical Path and any adjustment to the Contract Completion Date;
  - Order the CM to proceed with the change to the Work;
  - Order the CM to keep in a form acceptable to the Owner, an accurate, itemized account of the actual cost of the change in the Work, including, but not limited to, the actual costs of labor, materials, equipment, and supplies;
  - Order the CM to annotate a copy of the Project schedule to accurately show the status of the Work at the time the initiating Change Order is issued, to show the start and finish dates of the changed Work, and the status of the Work when the changed Work is completed; and
  - State that a confirming Change Order will be issued to reflect any increase or decrease to the Contract Price and any change in the Contract Completion Date directly resulting from the change in the Work.

The CM shall sign the initiating Change Order acknowledging it will proceed with the change in the Work. The CM's signature on an initiating Change Order citing this Subsection 38(a) (3) shall not constitute the CM's agreement on the cost or time impact of the change in the Work.

Except as otherwise may be agreed to in writing by the Owner, costs incurred due to a change in the Work pursuant to this subsection 38(a)(3) shall not exceed those prevailing for the trades or crafts (based upon rates established by the U.S. Department of Labor, Bureau of Labor Statistics, or other generally recognized cost data publication), materials, and equipment in the locality of the Project, may include only those items listed as allowable in Subsection 38(e), and shall not include any of the costs listed as not allowable in Subsection 38(f). The Owner shall be permitted, on a daily basis, to verify the CM's cost records and may require such additional records as are necessary to determine the cost of the change to the Work.

Within fourteen (14) Days after the completion of the change in the Work, the CM and the Owner shall review and reconcile all cost records and schedule information regarding the change in the Work. The parties shall prepare a confirming Change Order addressing: (i) any change in the Contract Price resulting from the change in the Work, based on the records kept and the CM's allowance for overhead and profit determined in accordance with the provisions set forth in Subsections 38 (d), (e), and (f) below; and (ii) any change in the Contract Completion Date as a result of the change in the Work's impact on the Critical Path. If agreement on the confirming Change Order is not reached

within the fourteen (14) Day period following completion of the change in the Work, the CM may submit a claim for the disputed cost or time as provided for in Section 47.

4. The Owner may issue a unilateral Change Order for any change in the Work stating the change in the Contract Price and/or change in the Contract Completion Date deemed appropriate by the Owner for the Work. If the CM objects to adjustments reflected in the unilateral Change Order, the CM may submit a claim for the disputed costs or time as provided for in Section 47.
- b. The CM shall review any Owner proposed change in the Work and shall respond in writing within fourteen (14) calendar Days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon its Work, including any increase or decrease in the Contract Price or Contract Completion Date that the CM requests as a result of the proposed change. The CM shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the proposed change in Contract Price. Any change in the Contract Completion Date shall be justified as set forth in Subsection 38(g).

The Owner shall review the CM's proposal and respond to the CM within thirty (30) days of receipt. If a change to the Contract Price and Contract Completion Date are agreed upon, both parties shall sign the Change Order. If a revised Contract Price and/or Contract Completion Date are not agreed upon, the Owner may direct the CM to proceed pursuant to Subsections 38(a)(3) or 38(a)(4).

- c. In figuring changes, any instructions for measurement of quantities set forth in the Contract shall be followed.
- d. Overhead and profit for both additive and deductive changes in the Work (other than changes covered by unit prices) shall be paid by applying the specified percentage markups only on the net cost of the changed Work (i.e. difference in cost between original and changed Work excluding overhead and profit). Said percentages for overhead and profit shall reasonably approximate the CM's overhead and profit, but shall not exceed the percentages for each category listed below:
  1. If a Subcontractor does all or part of the changed Work, the Subcontractor's mark-up for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). The CM's mark-up for overhead and profit on the Subcontractor's price shall be a maximum of ten percent (10%).
  2. If the CM does all or part of the changed Work ordered by the Owner for Work not included in the GMP, its markup for overhead and profit on the changed Work it performs shall be a maximum of fifteen percent (15%).
  3. If a Sub-subcontractor at any tier does all or part of the changed Work, the Sub-subcontractor's markup on that Work shall be a maximum of fifteen percent (15%). The markup for overhead and profit on a Sub-subcontractor's Work by the CM and all intervening tiers of Subcontractors shall not exceed a total of ten percent (10%) when the changes in the Work are ordered by the Owner where such Work was not included in the GMP. Change orders utilizing the CM Contingency shall not be marked up more than fifteen percent (15%) as the CM markup is already included in the CM fee.
  4. Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract Price attributable to that Work shall be deducted from the Contract Price. However, in the event that equipment, product, or material Submittals have been approved and orders placed for said equipment, products, or materials, a lesser amount, but in no case less than eighty percent (80%) of the Contract Price attributable to that Work, shall be deducted from the Contract Price. The credit to the Owner for reduced premiums on

Standard Labor and Material Payment Bonds and Standard Performance Bonds shall in all cases be one hundred percent (100%).

- e. Allowable costs for changes in the Work may include but are not limited to the following:
1. Labor costs for employees directly employed in the change in the Work, including salaries and wages plus the cost of payroll charges and fringe benefits and overtime premiums, if such premiums are explicitly authorized by the Owner.
  2. Materials incorporated into the change to the Work, including costs of transportation and storage, if applicable. If applicable, all cash discounts shall accrue to the CM, unless the Owner deposits funds with the CM to make such payments. All trade discounts, rebates, refunds, and returns from the sale of surplus materials shall accrue to the Owner.
  3. Equipment incorporated in the changed Work or equipment used directly in accomplishing the Work. If rented expressly for accomplishing the change in the Work, the cost shall be the rental rate according to the terms of the rental agreement, which the Owner shall have the right to approve. If owned by the CM, the costs shall be a reasonable price based upon the life expectancy of the equipment and the purchase price of the equipment. If applicable, transportation costs may be included.
  4. Costs of increases in premiums for the Standard Labor and Material Payment Bond and the Standard Performance Bond, provided coverage for the cost of the change in the Work results in such increased costs. At the Owner's request, the CM shall provide proof of notification to the Surety of the change in the Work and of the Surety's agreement to include such change in its coverage. The cost of the increase in premium shall be an allowable cost but shall not be marked up.
  5. CM and Subcontractor overhead costs as set forth in Subsection (d) markups above.
  6. **Agreed Compensation for Overhead for Changes to Time for Completion or Contract Completion Date for Changes to the Work:** If the change in the Work also changes the Contract Completion Date by adding Days to complete the Work, an itemized accounting of the following direct Site overhead and home office overhead and other indirect overhead expenses set forth in subparagraphs (a) and (b) below may be considered as allowable costs for compensation in addition to those shown above:
    - a. **Direct Site Overhead Expenses:** The CM's per diem expenses, as shown by the itemized accounting, for the following allowable direct Site overhead expenses: The Site superintendent's pro-rata salary, temporary Site office trailer, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilet facilities for each Day added. All other direct expenses are covered by and included in the Subsection 38(d) markups above.
    - b. **Home Office and Other Indirect Overhead Expenses:** A five percent (5%) markup on the above direct Site overhead expenses will be allowed as compensation for the CM's home office overhead and all other direct or indirect overhead expenses for Days added to the Time for Completion or the Contract Completion Date for a change in the Work. All other overhead and other direct or indirect overhead expenses are covered by and included in this markup and the Subsection (d) markups above.

No direct Site, home office, or other indirect overhead shall be paid if the changed Work is done on a unit price basis unless the CM can demonstrate that the unit price does not include direct and indirect overhead costs.

7. Any other costs directly attributable to the change in the Work with the exception of those set forth in Subsection 38(f) below.
- f. Allowable costs for changes in the Work shall not include the following:
1. Costs due to the negligence of the CM, any Subcontractor, Supplier, their employees or other persons for whom the CM is responsible, including, but not limited to, costs for the correction of Defective Work, for improper disposal of material, for equipment wrongly supplied, for delay in performing the Work, or for delay in obtaining materials or equipment.
  2. Home office expenses including payroll costs for the CM's officers, executives, administrators, accountants, counsel, timekeepers, clerks, and other similar administrative personnel employed by the CM, whether at the Site or in the CM's principal or branch office for general administration of the Work. These costs are deemed overhead included in the percentage markups allowable in Subsection 38(d) above.
  3. Home and field office expenses not itemized in Subsection 38(e) (6) above. Such items include, but are not limited to, expenses of CM's home and branch offices, CM's capital expenses, interest on CM's capital used for the Work, charges for delinquent payments, small tools, incidental job costs, rent, utilities, telephone and office equipment, and other general overhead expenses.
  4. Other items reasonably determined by the Owner to not be allowed.
- g. All Change Orders, except initiating Change Orders authorizing work pursuant to Subsection 38(a) (3) procedures, must state that the 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 also must be stated.

If the CM requests an extension to the Contract Completion Date, it must provide written justification for the extension to the A/E and to the Owner. No extension to the Contract Completion Date shall be allowed unless, and then only to the extent that, the additional or changed Work increases the length of the Critical Path beyond the Contract Completion Date. Extensions to the Contract Completion Date will be granted only when an excusable delay exceeds the Total Float in the activity or path of activities affected by the Change Order. If approved, the increase in time required to complete the Work shall be added to the Contract Completion Date.

The Owner may decrease, by Change Order, the Contract Completion Date when an Owner-requested deletion from the Work results in a decrease in the actual time required to achieve Substantial Completion of the Work. The CM may submit a request for an earlier Contract Completion Date under the procedures and subject to the considerations set forth in Section 19(f). No request for an earlier Contract Completion Date shall be considered for approval unless the proposed shorter schedule is otherwise acceptable under Sections 19(b) or (c), whichever is applicable.

With the exception of Change Orders under Subsection 38(a) (3), which shall arrive at a change to the Contract Price and Contract Completion Date using the procedures set forth therein, each Change Order shall include all time and monetary impacts of the change, whether the Change Order is considered alone or with all other changes during the course of the Project. Change Orders issued without a change to the Contract Completion Date and/or Contract Price conclusively establish that the change in the Work reflected by that Change Order had no impact on the Contract Price and/or Contract Completion Date. The parties may mutually agree in writing to postpone a determination of the time-related impacts of a change in the Work for a period of not more than forty-five (45) Days following completion of the change in the Work to give the CM an opportunity to submit documentation substantiating any requested change in the

Contract Completion Date or Contract Price. During any such postponement, all Work shall proceed, unless the Owner agrees otherwise. The CM's failure to submit all required substantiating documentation during a forty-five (45) Day postponement shall conclusively establish that the change in the Work did not impact nor require an adjustment of the Contract Price and Contract Completion Date.

If at any time there is a delay in the Critical Path of the Work due to a postponement, the CM's efforts to justify an extension of the Contract Completion Date or an increase in the Contract Price, or the CM's refusal to proceed with any of the Work, such delay and any CM costs resulting from it shall not serve as the basis for the extension of the Contract Completion Date or for an increase in the Contract Price.

- h. The acceptance by the CM of any payment made by the Owner under a Change Order shall be and operate as a release to the Owner of all demands and claims by the CM to additional compensation or an adjustment of the Contract Price or Contract Completion Date for all things done or furnished in connection with the Work described in the Change Order. The execution of any Change Order by the Owner shall not be an acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve the CM of responsibility for faulty materials, Defective Work or poor workmanship or operate to release the CM or its surety from any obligation arising under the Contract, the Standard Performance Bond, or the Standard Labor and Material Payment Bond.
- i. Payments will not be made for any Work, labor or materials performed on a unit price or a Subsection 38(a)(3) basis until the CM has furnished the Owner documents, certified as true and correct by an authorized officer or agent of the CM, evidencing the cost of such Work, labor and materials. The Owner may require any or all of the following documentation to be provided by the CM.
  - 1. **For Work performed on a Unit Price basis:**
    - Certified measurements of authorized and approved excavations, over-excavations, fills and/or backfills, and similar work;
    - Certified measurements of piling installed, caissons installed, and similar work;
    - Daily records of waste materials removed from the Site and/or fill materials imported to the Site; and/or
    - Other measurements as appropriate to establish the actual quantities of work being performed on a Unit Price basis.
  - 2. **For Work performed on a Subsection 38(a)(3) basis:**
    - Certified payroll records showing the name, classification, date, daily hours, total hours, rate, and extension for each laborer, foreman, supervisor, or other worker;
    - Equipment type & model, dates, daily hours, total hours, rental rate, or other specified rate, and extension for each unit of equipment;
    - Invoices for materials showing quantities, prices, and extensions;
    - Daily records of waste materials removed from the Site and/or fill materials imported to the Site;
    - Certified measurements of over-excavations, piling installed and similar work; and/or
    - Transportation records for materials, including prices, loads, and extensions.

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

**39. EXTRAS**

If the CM claims that any instructions given to him by the A/E or by the Owner, by drawings or otherwise, require extra work outside the scope of the Contract, then, except in emergencies endangering life or property, it shall give the A/E and the Owner written Notice thereof before proceeding to execute the extra 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. If it is not immediately clear to the CM that a request or instruction involves extra Work outside the scope of the Contract, then written Notice shall be sufficient if it's given as soon as possible after CM's realization that a request or instruction involves extra Work, but in no event later than fourteen (14) Days after the start of such extra Work. If the Owner agrees, a Change Order shall be issued as provided in Section 38 for the extra work and any additional compensation shall be determined by one of the methods provided in Subsection 38(a), as selected by the Owner. If the Owner does not agree, then the CM may submit a claim for the disputed cost or time as provided for in Section 47. No claim for additional compensation for extra Work will be considered unless the CM timely has provided the required Notice.

**40. CONSTRUCTION MANAGER'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 CM or anyone employed by it, or if the Owner should fail to pay to the CM within thirty (30) Days any sum certified by the A/E when no dispute exists as to the sum due or any requirement of the Contract, then the CM may, upon ten (10) Days written Notice to the Owner and the A/E, stop Work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit on the Work performed shall be recovered only to the extent that the CM can demonstrate that it would have had profit on the entire Contract if it had completed the Work. The CM may not receive profit or any other type of compensation for parts of the Work not performed. The CM may recover the reasonable cost of physically closing down the Site, but no other costs of termination. The Owner may offset any claims it may have against the CM against the amounts due to the CM. In no event shall termination of the Contract by the CM terminate the obligations of the CM's surety on its payment and performance bonds.

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

- a. If the CM should be adjudged as bankrupt, or if it should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the Owner may terminate the Contract. If the CM should refuse or should repeatedly fail, except in cases for which extension of time is provided, to supply enough properly skilled tradespeople or laborers or proper materials and equipment, or if it should fail to perform the Work in a diligent, efficient, workmanlike, skillful, or careful manner, or if it should fail or refuse to perform the Work in accordance with the Contract Documents, or if it should fail to make prompt payment to Subcontractors or Suppliers of material or labor, or if it should disregard laws, ordinances, building codes or the written instructions of the A/E or the Owner, or otherwise be in substantial, willful or repeated violation of any provision of the Contract, then the Owner may terminate the Contract.
- b. Prior to termination of the Contract, the Owner shall give the CM and its surety ten (10) Days' Notice of such termination and allow ten (10) Days during which the CM and/or its surety may rectify the basis for the Notice. If rectified to the satisfaction of the Owner within said ten (10) Days, the Owner may rescind its notice of termination. If the basis for the termination is not rectified within said ten (10) Days, the termination for cause shall become effective at the end of the ten (10) Day period without further Notice to the CM. At any time, the Owner may, in writing, postpone the effective date of the termination for cause, at its sole discretion, if it should receive reassurances from the CM and/or its surety that the basis for the termination will be remedied in a time and manner which the Owner finds acceptable. If at any time after such a postponement, the Owner determines that CM and/or its surety has not or is not likely to rectify the causes of termination in an acceptable manner or to do so within the time allowed, then the

Owner may immediately terminate the Contract for cause, without the necessity of further ten (10) Day Notice, by notifying the CM and its surety in writing of the termination. In no event shall termination for cause terminate the obligations of the CM's surety on its payment and performance bonds.

- c. Upon termination of the Contract becoming effective, the Owner shall take possession of the Site and of all materials, tools and equipment thereon and shall proceed as follows:
  - 1. **No Security or Bonds Provided:** If no security has been required pursuant to Section 8, the Owner shall finish the Work by whatever method the Owner deems reasonable or expedient. 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 CM shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
  - 2. **Security or Bonds Provided:** If security has been required and provided pursuant to Section 8 herein, the Owner shall provide Notice to the Surety that termination of the Contract became effective and proceed as set forth in the Standard Performance Bond (CO-10), and the Terms and Conditions therein. If the expense of finishing the Work, including compensation for additional managerial and administrative services, shall exceed the unpaid balance of the Contract Price and all amounts due under the Standard Performance Bond, the CM shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
- d. If it should be judicially determined that the Owner improperly terminated this Contract for cause, then the termination shall be deemed to be a termination for the convenience of the Owner, and the CM's rights and remedies shall be solely limited to those provided by Section 42 of these General Conditions.
- e. Termination of the Contract for cause is in addition to and without prejudice to any other right or remedy of the Owner. Any actions by the Owner permitted herein shall not be deemed a waiver of any other right or remedy of the Owner under the Contract or under the law. The Owner may offset any claims it may have against the CM against the amounts due to the CM. The provisions of this Section shall survive termination of the Contract.
- f. The provisions of Sections 3(j), 9(e), 14, 30, and 45 also shall survive termination of the Contract for cause.

#### 42. TERMINATION BY OWNER FOR CONVENIENCE

- a. The Owner may terminate this Contract, in whole or in part, at any time without cause upon giving the CM written Notice of such termination. Upon Notice of termination for convenience, the CM shall immediately cease Work and remove from the Site all of its labor forces, equipment, and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. The CM also shall take such steps as Owner may require to assign to the Owner the CM's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the CM shall receive as full compensation the following:
  - 1. Amounts due for Work performed in accordance with the Contract subsequent to the latest approved Schedule of Values and Certificate for Payment (CO-12) through the date of termination;
  - 2. All amounts due under Contract for Work completed prior to the date of termination; and



3. Reasonable compensation for the actual cost of demobilization incurred by the CM as a direct result of termination for convenience, plus overhead not to exceed 15 percent (15%) of the direct costs of demobilization.

The CM agrees it shall not be entitled to any additional compensation, including but not limited to loss of revenue, income, profit, business, reputation, or bonding capacity, consequential damages or lost profits, but shall only receive payment upon termination for convenience as stated in this Subsection 42(a). The Owner may offset any claims it may have against the CM against the amounts due to the CM. Upon payment of the amounts stated in this Subsection 42(a), Owner shall have no further obligations to CM of any nature.

- b. In no event shall termination for the convenience of the Owner terminate the obligations of the CM's surety on the payment and performance bonds. The provisions of Sections 3(j), 9(e), 14, 30 and 45 also shall survive termination of the Contract for convenience.
- c. Any actions by the Owner permitted herein shall not be deemed a waiver of any other right or remedy of the Owner under the Contract or under the law. The provisions of this Section shall survive termination of the Contract.

#### 43. DAMAGES FOR DELAYS; EXTENSION OF TIME

- a. **Excusable Non-Compensable Delays:** If the Critical Path is delayed by strikes, fires, unusual delays in transportation, unavoidable casualties, or other causes outside the control of the Owner and the CM, with the exception of delays caused by weather which are addressed in Section 6, and the CM seeks an extension of the Contract Completion Date, then the CM shall give the Owner and A/E written Notice of the delay not later than fourteen (14) Days following the inception of the delay. The CM shall give written Notice to the Owner and A/E of the termination of the delay event not later than fourteen (14) Days after the delay has ceased. Within twenty (20) Days after the delay event has ceased, CM shall submit to the Owner and the A/E, the Contractors' written request for an extension of the Contract Completion Date, specifically stating the cause of the delay, the number of days of extension requested, and an analysis of the delay event's impact on the Critical Path. If the Owner agrees that the Critical Path has been impacted by the delay event, the Owner shall extend the Contract Completion Date for the length of time that the Critical Path was delayed. The CM shall not be charged with liquidated or actual damages for such period of Critical Path delay nor shall the CM be due compensation or damages of any kind, under any theory of law, as a result of such Critical Path delay, the impact of such delay, or its acceleration of Work as a result of such delay.
- b. **Excusable Compensable Delays:** If the Critical Path unreasonably is delayed by acts or omissions of the Owner, or its agents, contractors, or employees due to causes within the Owner's control, and the CM seeks an extension of the Contract Completion Date and/or additional compensation due to the unreasonable delay, then the CM shall notify the Owner and the A/E immediately at the time of the occurrence giving rise to the delay by the fastest means available. The Contractors also shall give written Notice to the Owner and A/E no later than two (2) business days after inception of the delay. The CM's written Notice shall specify the nature of the delay claimed by the CM, the cause of the delay, and the impact of the delay on the Critical Path. The Owner shall have three (3) business days to respond to the CM's Notice with a resolution, remedy, and direction to alleviate the delay, or rejection of the CM's requested relief. The Owner's failure to respond within the time required shall be deemed to be a denial of the CM's entitlement to an extension of the Contract Completion Date and additional compensation. The CM shall also give written Notice to the Owner and A/E of the termination of the delay event not later than fourteen (14) Days after the delay has ceased. Within twenty (20) Days after the delay event has ceased, CM shall submit to the Owner and the A/E, the CM's written request for an extension of the Contract Completion Date, specifically stating the cause of the delay, the number of days of extension requested, a calculation of the additional compensation sought, and an analysis of the delay event's impact on the Critical Path. Requests for additional compensation must be

substantiated by itemized data and records demonstrating that the costs incurred by the CM are directly attributable to the delay and shall be calculated from the Contract Completion Date, not using any early completion planned or scheduled by the CM unless a Change Order has been executed pursuant to Section 19(f) changing the Contract Completion Date to reflect such early completion. If and to the extent that a delay is caused by or due to the Owner or A/E taking any actions permitted or required by the Contract, the CM shall be entitled to an extension of the Contract Completion Date or additional compensation only for the portion of the delay that is unreasonable, if any.

- c. **Non-Excusable Non-Compensable Delays:** The CM shall not be entitled to an extension of the Contract Completion Date or to any additional compensation if and to the extent a delay is: (1) caused by acts, omissions, fault, or negligence of the CM or its Subcontractors, agents, or employees; (2) arises from foreseeable causes within the control of the CM or its Subcontractors, agents or employees, including, but not limited to, Defective Work, poor workmanship, improper or inferior materials, Defective Work which must be corrected before dependent work can proceed, Defective Work for which corrective action must be determined before like work can proceed, from incomplete, incorrect, or unacceptable Submittals or samples, or the failure to furnish enough or properly skilled workers, proper materials or necessary equipment to perform the work in a timely manner in accordance with the Project schedule; or (3) due to causes that would entitle the Owner to recover delay costs or other damages from CM.
- d. No extension of time or additional compensation will be allowed unless the CM demonstrates that the delay directly impacted the Critical Path of the most current approved Project schedule and that all Float has been consumed. No extension of time or additional compensation will be allowed if the CM failed to provide all Notice and information in the manner and within the time periods set forth in Subsections 43(a) or (b) above, whichever applies. Failure to timely provide all required information and Notices shall preclude an extension of the Contract Completion Date or payment of additional compensation based upon that cause.
- e. If the CM makes a claim against the Owner for costs or damages, the CM shall be liable to and shall pay to the Owner that percentage of all costs incurred by the Owner in investigating, analyzing, negotiating, and litigating or arbitrating that percentage of the claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact. (*Code of Virginia*, § 2.2-4335). Any change in the Time for Completion or Contract Completion Date shall be accomplished only by issuance of a Change Order.
- f. **Agreed Compensation/Liquidated Damages for CM Delay:** If liquidated damages are not established in the Supplemental General Conditions, the CM shall be liable for any and all actual damages sustained by Owner as a result of a delay for which CM is responsible. In addition to damages for delay, whether liquidated or actual, the CM shall also be liable for any and all actual damages sustained by the Owner as a result of any other breach of the Contract, including, but not limited to, Defective Work or abandonment of the Contract.

#### 44. INSPECTION FOR SUBSTANTIAL COMPLETION & FINAL COMPLETION

- a. The CM shall advise the Owner using the Certificate of Partial or Substantial Completion by the CM (CO-13.2a) of the date when the Work or designated portion thereof will be substantially complete and ready for inspection and testing by Owner to determine if Substantial Completion has been achieved. CM shall deliver Form CO-13.2a to the A/E at least ten (10) Days in advance of the date identified on the Form CO-13.2a. The A/E shall then attach its written endorsement as to whether the Work will be ready for inspection and testing on the date identified on the Form CO-13.2a. The A/E's endorsement is a convenience to the Owner only and shall not relieve the CM of its responsibility nor shall the A/E's endorsement be deemed to evidence or establish that the Work was substantially complete or ready for inspection and testing. Inspection and testing shall take place at a time(s) mutually agreeable to the CM, Owner, A/E, and Building Official.

The inspection shall include a demonstration by the CM that all equipment, systems, and operable components of the Project function properly and in accordance with the Contract Documents. The CM shall furnish access for the inspection and testing as provided in Section 21 of these General Conditions. The inspection and testing shall determine whether Substantial Completion has been accomplished and shall result in a written list of unfinished Work and Defective Work, commonly referred to as a “punch list”, which must be completed and corrected prior to Final Completion.

If, after successful completion of all testing, the A/E determines that the Work, either in whole or in part, has achieved Substantial Completion, the A/E shall notify the Owner of such, in writing, using the Certificate of Partial or Substantial Completion by the A/E (CO-13.1a). The Owner shall notify the CM, in writing, of the date the Owner accepts the Work, or the specified portion thereof, as having achieved Substantial Completion or, if it is not, shall notify the CM of the deficiencies to be corrected or completed before such Work will be accepted as substantially complete.

- b. The CM shall advise the Owner, in writing using the Certificate of Completion by the CM (CO-13.2) of the date when the Work has reached or will reach Final Completion and will be ready for final inspection and testing. CM shall deliver Form CO-13.2 to the A/E at least five (5) Days in advance of the date identified on the Form CO-13.2. The A/E shall then attach its written endorsement as to whether the Work will be ready for inspection and testing on the date identified on Form CO-13.2. The A/E’s endorsement is a convenience to the Owner only and shall not relieve the CM of its responsibility nor shall the A/E’s endorsement be deemed to evidence or establish that the Work achieved Final Completion. Final Completion inspection and any necessary testing shall be conducted in the same manner as the inspection for Substantial Completion. The Owner shall not establish the Final Completion Date until the Work is finally and totally complete, including the completion of punch list items, submission of all required documentation, and elimination and correction of all Defective Work.
- c. Representatives of the CM, Owner, A/E, and Building Official will participate in the Substantial Completion and/or Final Completion inspections. The A/E shall conduct and document the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more Substantial or Final Completion re-inspections are required, the CM shall reimburse the Owner for all costs of re-inspection or, at the Owner’s option, the costs may be deducted from payments due to the CM.
- d. A representative of the State Fire Marshal’s Office will either be present at the Substantial and Final Completion inspections or otherwise inspect the completed Work and report any fire safety deficiencies to the Building Official. The State Fire Marshal will advise the Owner and CM of those deficiencies.
- e. Approval of Work at or as a result of any inspection required herein shall not release the CM or its surety from responsibility for complying with the Contract.

#### **45. GUARANTEE OF WORK AND INDEMNIFICATION**

- a. Except as otherwise specified or required, the CM guarantees all Work, materials, equipment, and workmanship conform to the requirements of the Contract Documents and are free from defects, imperfections, or non-conformities, normal wear and tear excepted, for a period of one (1) year from the Final Completion Date. 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 the equipment’s first seasonally appropriate test and acceptance, in writing, by the Owner. Where the Owner 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 achieves Final Completion, the guarantee for that portion or phase shall begin on the date that the Owner takes Beneficial Occupancy, unless otherwise specified in the Supplemental General Conditions, Special Conditions, or by separate agreement. This guarantee is separate and apart from any

manufacturers' warranties and the warranty set forth in Section 30. At six (6) months and eleven (11) months after Substantial Completion, the CM shall meet with the Owner to review the status of and assign value to any unresolved warranty, guarantee, and punch list items.

- b. If, within any guarantee period, Work which is not in accordance with the Contract, Defective Work, or inferior material, equipment or workmanship is noted by the Owner or A/E which requires or renders necessary repairs or changes in connection with the guaranteed Work, the CM shall, promptly upon receipt of Notice from the Owner, such Notice being given not later than two weeks after the guarantee period expires, and without expense to the Owner:
  - 1. Correct, repair, replace or otherwise place in satisfactory condition all Defective Work, defects, nonconformity, inferior materials, equipment or workmanship;
  - 2. Make good all damage to the structure or Site or equipment or contents thereof, which, in the opinion of the Owner or the A/E, is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the requirements 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 requirements of the guarantee.
- c. In any case, when in fulfilling the requirements of the Contract and this guarantee or any other guarantee or warranty, the CM disturbs any work performed by a separate contractor, the CM shall restore such work to a condition satisfactory to the A/E and Owner and guarantee such restored work to the same extent as if it was guaranteed under this Contract.
- d. If the CM, after Notice, fails to proceed promptly to comply with the obligations of this Section 45, and the surety, after Notice, fails to cure the CM's default as provided in Section 41, the Owner may undertake all needed corrections or repairs and the CM and its surety shall be liable for all expenses 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 such special warranty or guarantee. 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.
- f. Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the CM might have under the Contract Documents, including liability for Defective Work under Section 30, for indemnity or for breach of the Contract. This Section relates only to the specific obligation of the CM to correct the Work and does not limit the time within which its obligation to comply with the Contract Documents otherwise may be enforced, nor the time within which legal proceedings may be commenced to establish the CM's liability with respect to its obligations under the Contract Documents.
- g. In the event the Work of the CM is to be modified by another contractor, either before or after the Final Inspection, the CM 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 CM shall not be responsible for any defects in material or workmanship introduced by another CM modifying CM's Work. The CM and any contractor making modifications shall each be solely responsible for its respective work. A contractor modifying the CM's Work shall be responsible for any damage to or defect introduced into the Work by its modification.

If a CM claims that a subsequent contractor has introduced defects of materials and/or workmanship into its Work, CM shall 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 it asserts that defects in its work were caused by the contractor whose work is modified.

- h. The CM shall indemnify and hold harmless the Commonwealth of Virginia, the Owner and the Owner's consultants, representatives, agents and employees from and against any and all claims, causes of action, losses, costs, expenses or damages, including but not limited to attorney's fees, of any kind or nature whatsoever, arising from or relating to any bodily injury, including sickness, disease or death, any property damage, and any monetary loss, that results from or arises out of the Work performed by the CM, or by or in consequence of the CM's neglect in safeguarding the Work, its use of unacceptable materials in the Work, or resulting from any act, omission, negligence, or misconduct of the CM, any of its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts the CM is or may be liable. The Owner may retain as much of the monies due the CM under the Contract as the Owner considers necessary to ensure that a fund will be available to pay a settlement or judgment of such suits, actions, or claims. If insufficient monies are or will become due, the CM's surety and/or insurers will not be released from liability until all such claims and actions have been settled and suitable evidence to that effect has been furnished the Owner.

#### 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 CM assign any monies due or to become due to him hereunder, without the prior written consent of the Owner. Consent to assignment shall not be unreasonably withheld. No assignment shall relieve any party from its obligations under the Contract.

#### 47. CONTRACTUAL DISPUTES (*CODE OF VIRGINIA, § 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 CM's intention to file such claim must be given to the Owner within fourteen (14) Days of the time of the occurrence or beginning of the Work upon which the claim is based. Such Notice shall state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of the Owner or its agents that allegedly caused or may cause damage to the CM and the nature of the claimed damage. Verbal notice, the Owner's actual knowledge, or a written notice given more than fourteen (14) Days after the occurrence or beginning of the Work upon which the claim is based, shall not be sufficient to satisfy the requirements of this Section. All claims shall state that they are "claims" pursuant to this Section, be submitted along with all practically available supporting evidence and documentation and the certification required by Subsection 47(f), and request a final decision. Certificates for payment, applications for payment, vouchers, invoices and similar requests for payment submitted for work done by the CM in accordance with the expected contract performance are routine submissions and are not claims under this Section. Proposed or requested Change Orders, demands for monetary compensation or other relief, and correspondence and e-mails to the Owner or its representatives, which do not strictly comply with the requirements of this Section, are not claims under this Section. Failure to timely provide notice of intent to submit a claim shall preclude any relief to the CM, including but not limited to an extension of the Contract Completion Date or payment of additional compensation.
- b. Although the CM may be required to submit certain classes of claims prior to Final Payment, and the CM is not prevented from submitting claims during the pendency of the Work, the Owner shall not be obligated to render a final written decision on any claim until after Final Payment. No written decision denying a claim or addressing issues related to the claim shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the Agency head or his or her designee. The CM may not institute legal action prior to receipt of the Owner's final written decision on the claim unless the Owner 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 Owner shall be final and conclusive unless the CM within six (6) months of the date of the final decision on a claim, initiates legal action as provided in *Code of Virginia*, § 2.2-4364. Failure of the Owner to render a timely decision on a claim shall not result in the CM being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Owner's failure to render a timely decision shall be the CM's right to immediately institute legal action. No administrative appeals procedure pursuant to *Code of Virginia*, § 2.2-4365 has been established for contractual claims under this Contract.
- d. Pursuant to *Code of Virginia*, § 2.2-4366, Alternative Dispute Resolution, the Owner may enter into an agreement with the CM to submit disputes arising from the performance of this Contract to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Owner, the Commonwealth, or any department, institution, division, commission, board or bureau thereof, shall be non-binding and subject to *Code of Virginia* § 2.2-514, as applicable. The details for the implementation of Alternative Dispute Resolution are provided in CPSM Section 3.2.7.
- e. In the event that a dispute, claim or controversy between the Owner and the CM arises regarding the requirements of the Contract, the performance of the Work, payment due the CM, the terms of any Change Order, or otherwise, the CM shall not stop, suspend or delay the Work or any part of the Work to be performed under the Contract, or under any Change Order, or as ordered by the Owner. The CM shall continue to diligently prosecute the Work to completion, including work required in any Change Order or as directed by the Owner.
- f. The CM shall submit a CM's Claim Certification (DGS-30-234) certifying that the claim is a true and accurate representation of the claim. Claims submitted without the CM's Claim Certification will be deemed incomplete and will not be considered.
- g. The compensation expressly provided for by this Contract shall be the CM's sole available compensation for the acts, omissions, or breaches by the Owner. These remedies shall survive termination or breach of the Contract.

#### 48. ASBESTOS

- a. This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the Work, when the scope of the Project has been reviewed and a comprehensive survey conducted by an individual licensed by the Virginia Department of Professional and Occupational Regulation to conduct building inspections for asbestos-containing materials in buildings, and where the Owner has attempted to remove or encapsulate all asbestos-containing material that may become friable or damaged during this Project.

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

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

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

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

- b. If asbestos abatement is included as a part of the Work, the CM shall assure that the asbestos abatement work is accomplished by those duly licensed as described in Section 3 of these General Conditions and in accordance with the specific requirements of the Contract and all applicable laws and regulations.
- c. If asbestos abatement is included as part of the Work, the licensed asbestos Subcontractor shall obtain the insurance required under Section 11(b) (4) of these General Conditions.

#### 49. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT

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

#### 50. PROJECT MEETINGS

- a. The intention of this Section is that the CM, the Owner, and the A/E have timely exchange of information and cooperate to accomplish the Work as required by the Contract Documents. The CM is responsible for managing the Work, obtaining approvals, and requesting clarifications on a timely basis. The Owner and A/E are responsible for making a reasonable effort to provide timely responses to the CM.
- b. **Preconstruction Meeting:** Prior to the start of construction and no later than 15 Days after the Notice to Proceed, a "Preconstruction" meeting shall be held with attendees to include the Owner's Project Manager and Project Inspector, the A/E's project manager and representatives of each design discipline involved in the Project, the Regional Fire Marshal, the CM's project manager and superintendent (and scheduler, if CM desires), and representatives of the CM's major Subcontractors. The purpose of the meeting is to clarify and discuss the specifics related to, but not limited to, the following:
  - 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. Name of CM's on-site certified Responsible Land Disturber.
  - Names, addresses, email addresses, telephone numbers and FAX numbers to be used for Requests for Information (RFI), Requests for Clarification (RFC), Requests for Proposals (RFP), Shop Drawings, Submittals, and Notices.
  - CM's proposed construction schedule, the requirements for schedule updates and recovery schedules, assessment, and management of risks to on-time and on-budget completion, and Owner's sequencing requirements, if any.
  - Schedule of Values and Certificate for Payment (CO-12) requirements and procedures.
  - Procedures for Shop Drawings, product data, and Submittals.
  - Procedures for handling Field Orders and Change Order (CO-11).
  - Procedures for CM's request for time extension, if any.
  - Construction Site requirements, procedures and clarifications to include:

- Manner of conducting the Work
- Site specialties such as dust and erosion control, stormwater management, project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic
- Safety
- Layout of the Work
- Quality control, testing, inspections, and notices required
- Site visits by the A/E and others
- Owner's Project Inspector duties
- Running Punch List
- As-Built Drawings
- Procedures and documentation of differing or unforeseen Site conditions
- Monthly Pay Meeting
- Assignment of responsibility for generation of meeting minutes of all project meetings.
- Project Close-Out requirements and procedures
- Project records
- Requirements for the CM to furnish the Owner a list of hazardous materials that may be brought onto the job site, and 48- hour notification requirement.

c. **Monthly Pay Meeting:** Section 36 establishes the requirement for a monthly pay meeting which will usually be held at or near the Site. In addition to Owner, A/E and CM representatives, the following representatives, at a minimum, should be available to attend portions of the meeting, as applicable or necessary:

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

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

- Observations of status, quality and workmanship of Work in progress
- Validation of the Schedule of Values and Certificate for payment
- Status of progress of the Work and conformance with proposed construction schedule and recovery schedule, if any
- Outstanding Requests for Information, Requests for Clarification and Requests for Proposal
- Submittals with action pending
- Status of pending Change Orders
- Status of CM Contingency
- Status of Running Punch List items
- Work proposed for coming pay period
- Discussions of any problems or potential problems which need attention

d. **Other Meetings:** Requirements for other meetings, such as progress meetings, coordination meetings, pre-installation meetings and/or partnering meetings, may be included in the Contract Documents.

## 51. SMALL BUSINESSES PROCUREMENT PLAN



If the Total Contract Amount of the Contract is greater than \$10,000 and the CM is a SWaM/SDV Business; then the CM shall include a Small Business Procurement Plan in its Bid (if subcontracting work is intended by the Contract as part of its performance of the Work).

If the Total Contract Amount of the Contract is greater than \$100,000, then the CM shall include in its Bid a Small Business Procurement Plan and report on the involvement of SWaM/SDV Businesses in the CM's performance of the Contract as follows:

- **Periodic Progress Reports:** The CM shall report on involvement of SWaM/SDV Business with each periodic invoice submitted by the CM. The report shall identify each subcontract or agreement with a SWaM/SDV Business, including the total contract value, and state the total amounts paid to each SWaM/SDV Business in connection with the Contract as of the report date. The report shall provide this information separately for each type of SWaM/SDV Business and shall clearly indicate those SWaM/SDV Businesses which were identified in the CM's Small Business Procurement Plan submitted by the CM in the procurement phase for the Contract. The CM shall provide two (2) copies of each periodic report to the Owner. Failure to submit the report with each invoice will result in the invoice being rejected by the Owner without payment.
- **Final Compliance Report:** Prior to or with its final invoice for payment, the CM shall certify and report on its compliance with the Small Business Procurement Plan, submitted by the CM in its Bid for the Contract, to the Owner through DGS' eVA system. In the Final Compliance Report, the CM shall:
  - Provide a written explanation to the Owner of any variances between the CM's Small Business Procurement Plan and the actual participation of SWaM/SDV Businesses in the CM's performance of the Contract; and
  - Report on the involvement of other SWaM/SDV Businesses in the CM's performance of the Contract, including the contract value, the type of SWaM/SDV Business, a comparison of the actual amount paid with the planned amounts, the total amount paid to each type of SWaM/SDV Business, and a calculation of the percentage of the Total Contract Amount paid to SWaM/SDV Business.

A format for the Final Compliance Report will be provided by the Owner.

The Owner may withhold final payment to the CM until the CM has complied with the requirements of its Small Business Procurement Plan submitted by the CM in the procurement phase for the Contract.

\* \* \* END OF CONSTRUCTION MANAGEMENT GENERAL CONDITIONS \* \* \*