

GENERAL CONDITIONS – CONSTRUCTION PROJECTS

SUMMARY OF CONTENTS

1. Definitions and Responsibilities
 - 1.1 Definitions
 - 1.2 Responsibilities
2. Scope of Work
 - 2.1 Intent Of Contract Documents
 - 2.2 General Conditions Control
 - 2.3 Entire Contract
 - 2.4 Interpretation Of Contract Documents
 - 2.5 Shop Drawings
 - 2.6 Variations In Estimated Quantities
 - 2.7 Differing Site Conditions
 - 2.8 Changes In The Work
 - 2.9 Modifications of Contract Price
 - 2.10 Unauthorized Work
 - 2.11 Repairs And Replacements
 - 2.12 Final Clean-Up
3. Control Of Work
 - 3.1 Authority of The Construction Manager
 - 3.2 Conformity With Contract Documents
 - 3.3 Discrepancies In And Descriptions Of The Contract Documents
 - 3.4 Cooperation By Contractor
 - 3.5 Contractor Coordination And Cooperation With Utilities
 - 3.6 Contractor Coordination And Cooperation With Other Contractors
 - 3.7 Authority And Duties Of Inspectors
 - 3.8 Inspection Of The Work
 - 3.9 Removal Of Defective Work
 - 3.10 Load Restrictions
 - 3.11 Maintenance Of Work During Construction
 - 3.12 Failure To Maintain Entire Project
 - 3.13 Acceptance For Maintenance
 - 3.14 Owner's Right To Perform Work
 - 3.15 Claims
 - 3.16 Disputes
4. Control Of Materials
 - 4.1 General
 - 4.2 Storage And Handling Of Materials
 - 4.3 Unacceptable Materials
 - 4.4 Owner Furnished Material Or Equipment
 - 4.5 Substitutions
 - 4.6 Approved Equals
 - 4.7 Contractor's Options
 - 4.8 Testing

5. Legal Relationships And Responsibilities
 - 5.1 Laws To Be Observed And Complied With
 - 5.2 Permits And Licenses
 - 5.3 Patented Devices, Materials And Processes
 - 5.4 Construction Safety And Health Standards
 - 5.5 Public Convenience And Safety
 - 5.6 Barricades And Warning Signs
 - 5.7 Preservation And Restoration Of Property
 - 5.8 Land, Air And Water Pollution
 - 5.9 Contractor's Liability Insurance
 - 5.10 Contractor's Fire And Extended Coverage Insurance
 - 5.11 Relationship Between Contractor And Public Officials And Employees
 - 5.12 No Waiver Of Legal Rights
 - 5.13 Covenant Against Contingent Fee
 - 5.14 Federal Participation
 - 5.15 Non-Discrimination In Employment
 - 5.16 Compliance with the Commission's Anti-Discrimination Program
 - 5.17 Conflict Of Interest
 - 5.18 Cost And Price Certification
 - 5.19 Relation Of Contractor And Subcontractors
 - 5.20 Subcontracting
 - 5.21 Employees, Subcontractors And Work Conditions
6. Prosecution & Performance
 - 6.1 Notice To Proceed
 - 6.2 Prosecution Of The Work
 - 6.3 Progress Schedule
 - 6.4 Limitations Upon Contractor's Operations
 - 6.5 Labor Disputes
 - 6.6 Clean-Up
 - 6.7 Suspension Of Work
 - 6.8 Termination For Convenience
 - 6.9 Termination For Default - Damages For Delay - Time Extension
 - 6.10 Liquidated Damages
 - 6.11 Partial Acceptance
 - 6.12 Final Inspection And Acceptance
 - 6.13 Warranty Of Construction
7. Payment
 - 7.1 Scope Of Payment
 - 7.2 Force Account Work
 - 7.3 Progress Payments
 - 7.4 Certificate of Payment
 - 7.5 Correction Of Work Before Final Payment
 - 7.6 Deductions For Uncorrected Work
 - 7.7 Payments Withheld
 - 7.8 Acceptance And Final Payment
 - 7.9 Late Payment
 - 7.10 Audit

GENERAL CONDITIONS

DEFINITIONS AND RESPONSIBILITIES

1.1 Definitions

Whenever and wherever throughout the Bidding and Contract Documents the words, or pronouns used in their stead, terms and phrases or the abbreviations defined in this section appear, they shall have and be given the meanings set forth herein. Unless otherwise specifically defined in this section, however, or unless the context of their usage clearly requires a different meaning, all words, terms and phrases not having a well known or commonly accepted special usage in the construction industry, or a well established technical meaning, shall be given their ordinary meaning.

Any use of masculine pronouns herein includes both the feminine and **neutral** genders, and vice versa. The use of the singular tense includes the plural, and the plural the singular.

The headings provided are listed for convenience only, and do not add to, alter or modify the meaning of the substantive text.

A. Words, Terms and Phrases

ADDENDUM (ADDENDA) - Written or graphic documents issued by the Commission, or its Design Professional prior to the time of bid opening, which revise or interpret the Bidding Documents by addition, deletion, clarification or correction.

AMENDMENT - A written document issued by the Commission, subsequent to the award and execution of the Contract and signed by the Contractor and the Commission, in which the Contractor and Commission mutually agree to undertake work beyond the scope of a Change Order.

APPROVED EQUAL - Those materials or equipment which possess the salient characteristics of and which in terms of quality, design and performance are functionally equivalent or superior to those of any specified item of material or equipment.

AWARD - The decision by Commission to execute a contract after all necessary approvals have been obtained.

BID(S) - A completed and executed written offer contained upon the Bid Form, which is submitted to the Commission pursuant to and in accordance with an Invitation For Bids and which sets forth the price, terms and description of the supplies, materials, services and construction, or construction related Work which the Bidder proposes to furnish and perform on behalf of the Commission in response to an Advertisement For Bids.

BID BOND - See "PROPOSAL GUARANTY."

BID FORM - The approved form on which the Commission requires bids to be set forth and submitted.

BIDDER - A legal entity formally submitting a Bid for the Work contemplated, acting directly or through a duly authorized representative.

BIDDING DOCUMENTS - The documents which set forth the procedures and requirements for preparing a bid and indicate the terms and conditions upon which bids for a contract to be awarded by the Commission will be evaluated. Such documents include the Advertisement For Bids, the Invitation for Sealed Bids, the Instructions to Bidders and any Supplemental Instructions to Bidders, the Bid Forms, the Contract and all Contract Forms, the General Conditions and any Supplemental General Conditions, Special Conditions or other Conditions of the Contract, the Drawings, the Specifications and all Addenda or Amendments thereto.

BUSINESS - A corporation, partnership, individual, sole proprietorship, joint venture or any other legal entity through which commercial activity is conducted.

CALENDAR DAY - Every day shown on the calendar, Saturdays, Sundays and holidays included.

CHANGE - An alteration or addition to, or deletion from, the requirements of the Contract Documents authorized to be made under the Contract.

CHANGE ORDER - A written document signed and issued by an authorized representative of the Commission, subsequent to the award and execution of the Contract, directing a Contractor to make alterations or additions to, or deletions from, the requirements of the Contract Documents which the Changes clause of the Contract authorizes the Commission to order, with the consent of the Contractor unless issued unilaterally.

COMPLETION - See "FINAL COMPLETION."

COMPLETION DATE - The calendar date upon which the Work under the Contract is required to be complete.

COMMISSION - The Maryland-National Capital Park and Planning Commission and its authorized employees, representatives and agents.

CONSTRUCTION - The process of building, altering, repairing, improving or demolishing any structure, building, roadway or other improvement to real property.

CONSTRUCTION MANAGER (MANAGER) - The Maryland-National Capital Park and Planning Commission designee to oversee and supervise the construction, or the Manager's duly authorized representative.

CONTRACT - The written agreement executed between the Commission and the Contractor, covering the performance of the Work and the furnishing of labor, services, equipment and materials, by which the Contractor is bound to perform the Work and furnish the labor, services,

equipment and materials, and by which the Commission is obligated to compensate the Contractor therefore at the mutually established and accepted rate or price.

CONTRACT ADMINISTRATOR - That person designated by the Commission to make decisions with respect to the administration of the Contract.

CONTRACT CHANGE - See "CHANGE."

CONTRACT DOCUMENTS - The documents which set forth the scope of and the requirements for the Work to be performed under the Contract, and the terms and conditions pursuant to which that Work is to be performed, as well as the respective obligations, responsibilities and rights of the parties to the Contract. Such documents include the Instructions to Bidders, and any Supplemental Instructions to Bidders, the completed Bid Forms as submitted, the executed Contract and all completed Contract Forms, the General Conditions and any Supplemental General Conditions, Special Conditions or other Conditions of the Contract, the Drawings, the Specifications and all Change Orders or Modifications thereto.

CONTRACT DRAWINGS - See "PLANS."

CONTRACT ITEM (PAY ITEM) - A part of the Work which is specifically described, and for which a price, either unit or lump sum, is provided, which includes the performance of all Work and the furnishing of all labor, equipment and materials, required by any of the Contract Documents.

CONTRACT MODIFICATION - Any written alteration in the Contract Plans or Specifications, delivery point, date of delivery, Contract Time, Contract Price, quantity or any other provision of the Contract, whether accomplished in accordance with a contract provision or by the mutual action of the parties to the Contract, including Change Orders, Contract Amendments or any other written modification of the obligations, right or responsibilities of either party to the Contract.

CONTRACT TIME - The number of calendar days provided for by the Contract Documents within which the Contractor is required to complete the Work contemplated by the Contract. If the Contract Documents provide a calendar date in lieu of a number of calendar days, the Work shall be completed on or before that date.

CONTRACTOR - The person or organization having a direct contractual relation with the Commission for the performance of the Work under the Contract. If the Contractor thereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable, and responsible for the complete performance of the entire contract.

CRITICAL PATH METHOD (CPM) - A scheduling and management system for the planning and performance of the Work, by Work element or construction activity, depicted on a network diagram and an accompanying logic printout, or depicted on a bar chart.

DESIGN PROFESSIONAL - An architect, landscape architect or engineer retained by the Commission to prepare contract documents for the Project. Should no independent Design Professional have been appointed to prepare contract documents or supervise the construction, then the Commission is the designated "Design Profession."

DIRECTOR - The Director of the Department of Parks, in Montgomery County, or the Director of the Department of Parks and Recreation, in Prince George's County.

EXECUTIVE DIRECTOR - Executive Director of The Maryland-National Capital Park and Planning Commission.

FINAL COMPLETION - The point in time at which the Contractor has completed all of the Work required under the Contract and has satisfied all of its obligations, duties and responsibilities under the Contract Documents.

INSPECTOR - The authorized representative of the Construction Manager of the Commission assigned to make detailed inspections of any and all portions of the Work performed under the Contract on behalf of the Commission.

INSTRUCTIONS TO BIDDERS - Instructions issued by the Commission setting forth bidding procedures for submission and award.

INVITATION FOR SEALED BIDS - Any document, and all parts attached thereto or incorporated by reference therein, used in soliciting offers for competitive sealed bids, including requests for proposals or quotations.

LETTER OF INTENT - Written verification from the Commission that the Contractor is the apparent low bidder.

MATERIALS - Any substances specified for use under the Contract Documents in the construction of the project and its appurtenances.

NOTICE OF AWARD - A written document, signed by the designated authorized representative of the Commission, advising a bidder that the Commission has accepted its offer to perform a contract for the Commission.

NOTICE TO BIDDERS - An advertisement for bids for required Work or materials, which indicates the location and magnitude of the Work to be done or the character and quantity of the materials to be furnished and the time and place of the opening bids.

NOTICE TO PROCEED - Written notice to the Contractor of the date on or before which the Contractor shall begin the prosecution of the Work to be done under the Contract.

OFFER - See "PROPOSAL."

OWNER - The Maryland-National Capital Park and Planning Commission.

PAYMENT BOND - The security, in a form approved by the Commission and executed by the Contractor and the Contractor's surety, paid for the by Contractor, which provides a guarantee that the Contractor will pay in full all bills and accounts for materials and labor used in the construction of the Work.

PERFORMANCE BOND - The security, in a form approved by the Commission and executed by the Contractor and the Contractor's surety, paid for by the Contractor, which provides a guarantee that performance of the Contract will be completed in accordance with the Contract Documents.

PERSON - Any individual or a corporation, partnership, sole proprietorship, joint stock company, joint venture, unincorporated association, union, committee, club or other organization or legal entity.

PLANS - The official drawings issued by the Commission as a part of the Contract Documents, including those incorporated into the Contract Documents by reference.

PROPOSAL - The response by an offeror to an invitation for sealed bids or a request for proposals issued by Commission to purchase materials or labor. The response may include, but is not necessarily limited to, an offeror's price and terms for the proposed contract and a description of technical expertise, Work experience and other information requested in the solicitation. As used herein, the word "proposal" also means "bid."

PROPOSAL GUARANTY - The security, in a form approved by the Commission, furnished by the bidder as a guaranty that the bidder will enter into a contract with the Commission if a contract for the Work is awarded to it.

REGULATORY INSPECTORS - Non-Commission inspectors with sole authority to review and approve Contractor's Work on behalf of licensing and permitting agencies.

REPAIR - Where used in the Contract Documents, repair shall be taken to mean to restore after damage, deterioration or wear; to mend; to renovate by such means as appropriate, and to supply such materials and labor as necessary to render the item to be repaired sound, solid, true, plumb, square, even, smooth and fully serviceable. Upon completion of such repair it must be, unless otherwise stated, rendered to such condition as to represent first class finished Work or, in instances where the repaired item serves as a base for additional finish, the repaired Work must be such as to permit a first-class finish to be applied without extra cost to the Commission. When the word "repair" is used in connection with machinery or mechanical equipment, it shall mean, in addition to the above, rendering the equipment completely serviceable and efficient, ready for the normal use for which it was intended originally.

REQUEST FOR PROPOSALS - See "INVITATION FOR SEALED BIDS."
REQUEST FOR QUOTATIONS - See "INVITATION FOR SEALED BIDS."

RESPONSIBLE BIDDER - A person who has sufficient experience, skill and capability to fully perform the Contract, including adequate managerial and administrative support, and sufficient facilities, equipment, supervision and labor forces to ensure that the bidder has the organizational integrity and reliability to assure good faith performance.

RESPONSIVE BID - An offer or proposal, submitted in response to an Invitation for Bids or a Request For Proposals or Quotations, that conforms in all material respects to the requirements of the Bidding Documents.

SPECIFICATIONS - A written description of the functional characteristics of or the discrete design for an item of material, equipment or Work to be incorporated into the construction, or a requirement of the Work to be performed under the Contract. It may include a statement of any of the user's requirements and may provide for inspection, testing or the preparation of a construction item before procurement.

STATE - The State of Maryland acting through its authorized representative.

SUBCONTRACTOR - Any person undertaking the construction of a part of the Work under the terms of the Contract by virtue of an agreement with the Contractor, including one who furnished material worked to a special design according to the Plans and Specifications for the Work. It excludes one who merely furnishes material not so worked.

SUBSTANTIAL COMPLETION - The point in time at which the Work has so progressed as to make the project as a whole fit and occupiable for use for its intended purpose and safe for use by the public.

SUPERINTENDENT - An agent of the Contractor, capable of communicating in English and of reading and thoroughly understanding the Contract Documents, who is thoroughly experienced in the type of Work being performed and can receive and execute instructions from the Construction Manager or Inspectors.

SUPPLIER (VENDOR) - Any person who furnishes directly to the Contractor materials or equipment not worked to a special design according to the Plans and Specification for the Work, or any person who furnishes to a subcontractor of the Contractor's any materials or equipment for the Work.

SURETY - The corporate body bound with and for the Contractor to the Commission for the full and complete performance of the Contract, and for the payment of all debts pertaining to the Work. When applying to the Proposal Guaranty it refers to the corporate body which engages to be responsible for the execution by the Bidder of the Contract.

VENDOR - See "SUPPLIER."

WORK - The Work shall be understood to mean the furnishing, in accordance with all of the requirement of the Contract Documents, of all the

labor, materials, equipment, services, utilities and other incidentals necessary for the final completion of the project, and the carrying out of all the duties and obligations imposed upon the Contractor by the Contract.

WORK DAYS - Monday through Friday, except: New Years' Day; Martin Luther King, Jr. day; Presidents' day; Memorial day; Juneteenth; Fourth of July; Labor day; Veterans' Day; Thanksgiving day and the day after; Christmas day.

WRITTEN NOTICE - Shall be deemed to have been duly served if delivered in person to the individual, or the member of the firm, or to an office of the corporation to whom it is intended, or if delivered to or sent first-class mail via the United States Postal Service, to the last business address known to the person who gives notice.

B. Abbreviations

AAN	American Association of Nurserymen
AAPA	American Association of Port Authorities
AAR	Association of American Railroads
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Association American Railway Engineering Association

ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air-Conditioning Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATA	American Transit Association
AWWA	American Water Works Association
AWS	American Welding Society
AWPA	American Wood Preservers Association
AGC	Associated General Contractors of American
BOCA	Building Officials and Code Administrators
COMAR	Code of Maryland Regulations
CRSI	Concrete Reinforcing Steel Institute
EEl	Edison Electric Institute
EIA	Electronic Industries Association
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration, U.S. Department of Transportation
FCC	Federal Communications Commission
FHWA	Federal Highway Administration, U. S. Department of Transportation
FRA	Federal Railway Administration, U.S. Department of Transportation

FSS	Federal Specifications and Standards, General Services Administration
IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineers Society
IPCEA	Insulated Power Cable Engineers Association
IRT	Institute for Rapid Transit
MBMA	Metal Building Manufacturers' Association
MSMT	Maryland Standard Method of Tests (as developed by the State Highway Administration)
MUTCD	Manual on Uniform Traffic Control Devices
NBFU	National Board of Fire Underwriters
NBS	National Bureau of Standards
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NFPA	National Fire Protection Association
OSHA	Occupational Safety and Health Administration
RLMI	Reflector and Lamp Manufacturers' Institute
SAE	Society of Automotive Engineers
SAWP	Society of American Wood Preservers
SHA	State Highway Administration
ULI	Underwriters Laboratories, Inc.
UMTA	Urban Mass Transportation Administration, U.S. Department of Transportation

1.2 Responsibilities

A. Commission's Responsibilities

1. The Commission will furnish any required surveys describing the physical characteristics and legal limitations of the site of the Work, together with any necessary or required legal description of the site.
2. Information or services under the Commission's control will be furnished by it with reasonable promptness and so as to avoid any unreasonable delay in the orderly progress of the Work.
3. The Commission will forward all instructions to the Contractor through its Construction Manager. Verbal instructions will be confirmed in writing.
4. The foregoing are in addition to any other duties and responsibilities of the Commission which are enumerated hereinafter, especially those related to Work to be performed either by the Commission itself or on its behalf by any separate or other contractor(s), payments and completion, and insurance.

B. Contractor's Responsibilities

1. The Contractor shall supervise and direct the Work, using the skill of a professional experienced in the construction field. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract.
2. The Contractor shall be responsible to the Commission and any third party, including separate contractors of the Commission, the State or any other political subdivision or governing body, for all acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor.
3. The Contractor shall not be relieved of any of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Construction Manager in the Contractor's administration of the Contract or by any inspections, tests or approvals required or performed by persons other than the Contractor.
4. The Contractor shall confine its operations at the site as permitted by law, ordinance, permit and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment.
5. The Contractor shall forward all construction, contract and field communications to the Commission through the Construction Manager. All invoices shall be sent to the Contract Administrator.
6. The Contractor shall perform all Work in strict accordance with the lines, grades, cross sections, dimensions and other data indicated by the Contract Documents, as such may be modified by written change order, including the furnishing of all materials, services, implements, machinery, equipment, tools, supplies, transportation, labor and all other items, things or work necessary for the timely and satisfactory prosecution and completion of the Work in full compliance with the requirements of the Contract Documents.

2. SCOPE OF WORK

2.1 Intent Of Contract Documents

- A. Generally. The documents comprising the Contract Documents are intended to be complementary and to describe the construction necessary for the completion of the Work. Anything mentioned in the Specifications but not indicated by the Drawings, or indicated by the Drawings but not mentioned in the Specifications, shall be given like effect and be treated as if indicated or mentioned by both.
- B. Errors and Omissions. Omissions from the Drawings or Specifications, or their failure to describe or misdescription of details of Work, which are manifestly necessary to carry out the intent of the Drawings and Specifications or are customarily performed, shall not relieve the Contractor of its obligations to perform such omitted or misdescribed details of Work, and they shall be performed as if fully and correctly indicated on and described in the Drawings and Specifications.
- C. It is the acknowledged intent of the Drawings and Specifications that the Contractor provide to the Commission a finished project, fully fit and useable for its apparent intended purpose and complete in every aspect required for its habitability and quiet enjoyment.

2.2 General Conditions Control

In the event of any conflict between these General Conditions and any other provision of the Contract Documents, these General Conditions shall prevail, unless such other provision expressly provides to the contrary.

2.3 Entire Contract

The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, either written or oral.

2.4 Interpretation Of Contract Documents

- A. Generally. The Contract Documents are complementary. That which is called for by any one of such shall be as binding as if called for by all of them.
- B. Interpretation. The Contract Documents are to be interpreted as including all work necessary for the proper completion of the Work, ready for continual occupancy and use for its intended purpose. They are not, however, to be construed as including any work not reasonably inferable therefrom.
 - 1. Clarification. The Contractor shall obtain clarification from the Construction Manager of any question which may arise regarding either the intent or the meaning of any of the Contract Documents, and the Construction Manager shall resolve any actual or purported conflict between or among any two or more provisions of the Contract Documents. Should the Contractor fail to obtain, or timely obtain, any such clarification, then the Construction Manager may direct that the Work proceed in accordance with any interpretation reasonably inferable from or indicated, specified or required by the Contract Documents which is consistent with maintaining the best construction

practice. Such direction by the Construction Manager shall not, however, constitute the basis for any claim for either extra cost or additional time by the Contractor. The Contractor hereby acknowledges that it had the opportunity to request all such clarifications prior to submitting its bid and, therefore, agrees that the Contractor is not entitled to claim any such extra cost or time entitlements as a result of any such clarifications.

2. Jargon. Words that have a well-known technical or trade meaning when used to describe work of the nature required by the Contract Documents shall be given their recognized standard meanings.
 3. Execution. The Contract Documents shall be signed in triplicate by the Commission and the Contractor.
- C. Drawings. The Contractor shall do no Work without proper drawings and/or instructions. Drawings provided by the Commission will be, in general, drawn to scale, and symbols are used to indicate materials and structural requirements. When symbols are used, those parts of the Drawings are, of necessity, diagrammatic only and they are not intended to indicate all connections, fittings, fastenings, etc. which are required to be furnished for the proper execution of the Work. Diagrammatic indications of piping, duct work and conduit, and similar items in the Work are subject to field adjustment in order to obtain proper grading, fitting passage over, under or past obstructions, and to avoid exposure in finished rooms or unsightly and obstructing conditions. The Contractor shall make all such field adjustments as are necessary at no increased cost to the Commission.
1. Copies Furnished. The Commission will furnish the Contractor, without cost, copies of the Drawings and Specifications which were supplied for bidding purposes and copies of any additional large scale detail or supplemental drawing which are prepared for use during the Work. Additional copies of any drawings may be obtained by the Contractor upon payment of the cost of reproduction of the drawings.
 2. Copies At the Site. The Contractor shall keep at the job site a complete set of all Drawings, Specifications, Shop Drawings, Schedules, Approved Permit Drawings, etc., in good order and make them available at all times to the Construction Manager and appropriate government representatives.
 3. Ownership. All Contract Documents remain the property of the Commission. They shall not be used by the Contractor for or on any other work and shall, upon request, be returned to the Commission upon completion of the Work.
- D. Large Scale Detail Drawings. The Construction Manager may furnish additional instructions, in the form of large scale developments of the Drawings used for bidding or otherwise, to amplify the Specifications for the proper execution of the Work. These shall be true developments of the Bidding Documents and reasonably inferable therefrom. The Work shall be executed in conformity therewith.
- E. Dimensions. The Contractor shall carefully check all dimensions prior to the execution of any particular work. Whenever inaccuracies or discrepancies are found therein, the Contractor shall consult the Construction Manager prior to

any construction or demolition. Should any dimensions be missing, the Construction Manager will supply them to the Contractor prior to execution of the particular work. Dimensions for items to be fitted into constructed conditions at the site will be taken in the field and will be the responsibility of the Contractor. The obvious intent of the documents, or obvious requirements dictated by conditions existing at the site or being constructed, supersede dimensions or notes which conflict therewith.

Whenever a stock size manufactured item or piece of equipment is specified by its normal or nominal size, it is the responsibility of the Contractor to determine the actual space requirements for setting or entrance to the setting space, and no extra will be allowed by reason of Work requiring adjustments in order to accommodate such particular items of equipment.

- F. Building Locations. Whenever new work, buildings, additions or portions thereof are found by the Contractor not to be accurately located by drawing dimensions, the Construction Manager will supply exact position information prior to execution of the Work.

2.5 Shop Drawings

- A. Submittals. The Contractor shall submit, for the Construction Manager's approval, at such times as are indicated in the CPM all shop drawings (including setting drawings and schedules) required by the Commission, its Construction Manager or its Design Professional(s) for the Work of the various trades. These shop drawings shall be prepared in conformity with the best practice and standards for the trade or craft involved. Due regard shall be given to speed and economy of fabrication and erection.
- D. Identification. All shop drawings must show the name of the Project and the Commission contract number.
- E. Size of Drawing. All shop drawings and details submitted to the Construction Manager for approval shall be printed on sheets of the same size as the Contract Drawings. When a standard drawing of a fabricator is of such size as to permit the printing of more than one such drawing on a sheet of the size of the Contract Drawings, such is acceptable.

Sheets larger than the Contract Drawings will not be accepted, except when specifically permitted by the Commission. Shop details supplied on a sheet of letter size (8-1/2" x 11") are acceptable for schedules and small details.

- F. Items For Which Shop Drawings Will Be Required. Shop drawings are required for all items which are specifically fabricated for the Work, or when the assembly of several items is required for a working unit. Shop drawings are required for all reinforcing and structural steel, specially made or cut masonry units, miscellaneous metal work, specially made millwork, plaster moulds or mouldings, marble and slate, special rough hardware and all heating, ventilating, plumbing and electrical items requiring special fabrication or detailed connections, including refrigeration, elevators, dumb waiters, laboratory equipment, ducts, etc.

- G. Copies Required. The Contractor shall supply two copies of each shop drawing for the Construction Manager's file, in addition to the number of such copies which the Contractor may desire to be returned for its own use.
- H. Examination and Approval. The Construction Manager will examine and return shop drawings, with reasonable promptness, either noting desired corrections or accepting or rejecting them.
- I. Field Dimension and Conditions. The Construction Manager is not responsible for the checking of dimensions or existing conditions in the field, and such shall be the sole responsibility of the Contractor.
- J. Resubmission. When the Construction Manager notes desired corrections, or rejects drawings, the Contractor shall resubmit the drawings with corrective changes.
- K. Contractor's Responsibility. Unless the Contractor has, in writing, notified the Construction Manager to the contrary at the time of the submission, the Construction Manager will assume that drawings are in conformity with the Contract Documents and do not involve either any change in the contract price or any change which will alter the space within any structure or the nature of any structure from that contemplated by the Contract Documents.
- L. Construction Manager's Notations. Should the Contractor consider any rejection or notation on the shop drawings to cause an increase in the cost of the Work required by the Contract Documents, the Contractor shall take no further action relative to the item in question and shall notify the Construction Manager, in writing, within five (5) days of the receipt of the notation or rejection. No Work shall be executed on that item until the entire matter is clarified and the Contractor is ordered to proceed. Failure of the Contractor to provide written notice, as required above, shall constitute a waiver by the Contractor of any claim in relation thereto. Should the notation or any alleged change involve less work than is required by the Contract Documents, the Contractor shall provide the Commission with a credit.

2.6 Variations In Estimated Quantities

Where the quantity of any item indicated by the Contract Documents is an estimated quantity, and where the actual quantity of such item varies more than 25 percent above or below the estimated quantity stated, an equitable adjustment in the contract price shall be made. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 125 percent or below 75 percent of the estimated quantity.

If the quantity variation is such as to cause an increase in the time necessary for completion, the Construction Manager shall, upon receipt of a written request for an extension of time submitted within ten (10) days from the beginning of the delay, or within such further period of time as may be granted by the Construction Manager before the date of final settlement of the Contract, ascertain the facts and make any adjustment extending the completion date as the findings justify, in the Construction Manager's sole judgment.

2.7 Differing Site Conditions

- A. Notice. The Contractor shall within five (5) days of learning of the conditions, and before such conditions are disturbed, notify the Construction Manager in writing of:
 - 1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or
 - 2. Unknown physical conditions at the site of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for by the Contract.
 - 3. The Construction Manager shall promptly investigate the conditions and, if the Construction Manager finds that such conditions do materially so differ and, further, cause an increase or decrease in the Contractor's cost of or the time required for performance of any part of the Work, whether or not changed as a result of such conditions, make an equitable adjustment and modify the Contract in writing accordingly.
- B. Waiver of Claim.
 - 1. The Contractor waives all claims under this section not timely noticed as required in A. above. Upon good cause shown, the Construction Manager may extend the time to file such a claim.
 - 2. No claim by the Contractor for an equitable adjustment hereunder shall be allowed unless asserted before Final Payment.

2.8 Changes In The Work

- A. Express Change Orders Directed by the Commission. The Construction Manager may, at any time, and without notice to the sureties (if any) by written order designated or indicated to be a Change Order, make any change in the Work within the general scope of the Contract, including but not limited to changes:
 - 1. In the Specifications (including Drawings);
 - 2. In the method or manner of performance of the Work;
 - 3. In Commission furnished facilities, equipment, materials, services or site; or
 - 4. By directing acceleration of the performance of the Work or otherwise altering the time permitted for performing the Work.
- B. Contractor Notice of Change. Any other written or oral order (which terms shall include directions, instructions, interpretations or determinations of the Construction Manager) which causes any such change, shall be treated as a Change Order under this section: The Contractor, prior to performing any Work required as a result thereof, must provide to the Construction Manager written notice stating the date, circumstances and source of the order, and indicating that the Contractor regards the order as a change. No claim for any change under this paragraph shall be allowed for any cost incurred more than ten (10) days before the Contractor gives written notice as herein required.

In the case of defective specifications for which the Commission is responsible, the equitable adjustment shall include increased costs reasonable incurred by the Contractor in attempting to comply with such defective specifications.

- C. **Statement of Claim.** If the Contractor intends to assert a claim for an equitable adjustment under this section, the Contractor shall, within ten (10) calendar days after receipt of either a written Change Order under A. above or submittal of written notice under B. above, submit to the Construction Manager a written statement setting forth the general nature and monetary extent of such claim. For good cause shown, the Construction Manager may, in the Manager's sole discretion, extend the ten-day time limit. The statement of claim hereunder may be included in the notice under B. above.
- D. **Commission Review.** Each modification or change order hereunder which affects the contract price shall be subject to the prior written approval of the Commission and to prior certification of the availability of funds and the effect of the modification or change order on the project budget or construction cost. If, according to the fiscal certification, the modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the Work is adjusted to permit its completion within the project budget.
- E. **Exclusive Remedy.** Except as herein provided, no order, statement or conduct of the Construction Manager shall be treated as a change under this section or entitle the Contractor to an equitable adjustment hereunder.
- F. **Waiver of Claim.** No claim by the Contractor for an equitable adjustment hereunder shall be allowed unless asserted before Final Payment.

2.9 Modifications Of Contract Price

When changes in the Work require modification of the contract price, such modifications shall be accomplished as follows:

- A. **Itemization.** The Contractor shall promptly submit to the Construction Manager a fully itemized breakdown of the quantities and prices used in computing the value of the requested change, along with a detailed explanation of and justification for the proposed change, regardless of the nature of the change.

For all changes in the Work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully itemized breakdown of quantities and prices, which shall bear the original signature of a representative of the subcontractor authorized to act for the subcontractor. If requested by the Construction Manager or Contract Administrator, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.
- B. **Calculation of Change in Price.** Modification of the contract price, when required, shall be determined as follows:
 - 1. When unit prices are stated in the Contract, or have been subsequently agreed upon, by application of such unit prices.
 - 2. A lump sum price agreed upon by both the Commission and the Contractor.
 - 3. If project conditions or the extent of or nature of the change require, or if the Commission and the Contractor fail to agree upon a lump sum price

or the application of unit prices to determine the cost of any proposed change, the Work shall be done on the basis of a Force Account as hereinafter stated under Section 7.2, Force Account Work.

4. If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor to perform the Work plus overhead and profit.
5. If the change involves both a reduction and an increase in Contract Price, both sums shall be shown and the two sums shall then be balanced to determine the adjusted total cost of or credit due for the change. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any change in the Work.
6. Unless otherwise specified, the allowable mark-up for combined overhead and profit for Work performed by the Contractor with the Contractor's own forces will be based upon the monetary value of the Work, in accordance with the following schedule:

Value of Work	Combined Overhead and Profit
\$0 - \$1,000	20%
\$1,001 - \$10,000	17%
\$10,001 - \$25,000	15%
Over \$25,000	Negotiated but not more than 15%

7. For Work performed by a subcontractor with the subcontractor's own forces, the percentages for combined overhead and profit for a subcontractor will be as stated in paragraph 6. above. On Work partly or solely performed by a subcontractor, the Contractor will be allowed 8% of the total cost of the subcontractor's labor and materials for overhead including taxes and insurance required by statute for labor.
8. The provisions of paragraphs 6 and 7 above shall apply only to modifications of contract price negotiated prior to completion of the changed Work and will not be applied to either Work performed on a Force Account basis as provided for in Section 7.2 or for variations in estimated quantities as provided for in Section 2.6.
9. On all changes in the Work, as defined in Section 2.8, no Contractor or subcontractor will be allowed any profit for employment of another contractor to perform Work for the Contractor or subcontractor.
10. On all changes in the Work, the Contractor will be reimbursed for the Contractor's expenditures for Workmen's Compensation Insurance, Social Security Taxes and Unemployment Compensation Taxes covering persons actually engaged upon the Work and the actual increased cost of bonds.

11. The cost of foremen and superintendents may be added only when the Change Order makes necessary the hiring of additional supervisory personnel or requires their continued employment for time additional to that originally required by the Contract.
12. The Contractor shall be allowed the actual cost of any rental of machine power tools or special equipment, including fuel and lubricants, which are necessary to execute the Work required on the change, but no percentages shall be added to this cost.

Equipment rental rates are to be agreed upon by the Construction Manager and the Contractor. The rates agreed upon shall, generally, approximate those contained in the latest publication of the Associated Equipment Distributors.

13. No order for any change shall in any manner or to any extent relieve the Contractor of any of its obligations under the Contract.
 14. The Construction Manager shall have the authority to make minor changes in the Work, not involving increases in either contract price or Time, which are not inconsistent with the purposes of the Work. Otherwise, except in any emergency endangering life or property, no extra Work or changes in the Work shall be performed by the Contractor unless previously authorized in writing by the Commission.
- A. The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, job supervision and field office expense required by the Contract, expenses for timekeepers, clerks and watchmen, costs of correspondence of any kind, any insurance not specifically mentioned herein, all expenses in connection with the maintenance and operation of the field office, the use of small tools, any cost of small trucks generally used for transporting either workmen, materials, tools or equipment to the job location, and all incidental job burdens. No percentage allowances will be made for maintenance or operation of the Contractor's regularly established principal office, branch office or similar facilities.

2.10 Unauthorized Work

Work done contrary to or notwithstanding the instructions of the Construction Manager, work done beyond the lines and grades shown on the Contract Drawings or as given, or any extra work done without written authority will be considered unauthorized and at the expense of the Contractor. Work so done may be ordered removed and/or replaced at the Contractor's expense.

2.11 Repairs And Replacements

Any damage done by the Contractor to existing improvements shall be repaired by him to the satisfaction of the Construction Manager and at no cost to the Commission.

2.12 Final Clean-Up

Upon completion of the Work specified in the Contract, and before final payment will be made, the construction area and all other adjoining areas occupied by the Contractor during the construction shall be cleaned of all surplus and discarded

or spilled materials, excess materials left deposited on the permanent Work as a result of the Contractor's operations, false work, rubbish, and any temporary structures or buildings that were placed on the site by the Contractor. The adjoining areas mentioned above, even if outside the normal pay limits for seeding, will be reshaped, seeded and mulched or otherwise restored as directed by the Construction Manager at the Contractor's expense.

3. CONTROL OF WORK

3.1 Authority Of The Construction Manager

- A. Document Interpretation and Project Management. Unless otherwise expressly provided to the contrary elsewhere in the Contract Documents, the Construction Manager shall, among other things, decide all questions which may arise under the Contract regarding the interpretation of any or all plans and specifications and shall furnish with reasonable promptness such clarifications as are consistent with the intent of the Contract Documents which the Manager may deem necessary for the proper execution of the Work. The Construction Manager shall also decide all questions which may arise during the performance of the Contract as to the quality and acceptability of materials furnished and Work performed, the amount and quantity of Work performed and materials furnished, payments to be made to the Contractor, the rate of progress of the Work, the conformance of the Contractor to the requirements of the Contract and satisfactory completion of the Work thereunder, and all Contractor requests or claims for additional compensation and extensions of time under the Contract.
- B. Work Stoppages. The Construction Manager shall have the authority to suspend the Contractor's performance under the Contract, in whole or in part, due to the failure of the Contractor to conform to any requirement of the Contract or whenever the Manager determines that such stoppage may be necessary to insure the proper execution of the Work.

3.2 Conformity With Contract Documents

- A. Generally, all Work performed, and all materials furnished or equipment supplied shall be in strict conformity with the requirements of the Contract Documents.
- B. Repair or Replacement. In the event that the Construction Manager finds that any of the Work performed or any of the materials furnished or equipment supplied, or any of the finished Work in which any of such materials are used or any of such equipment is installed, are not in strict conformity with the requirements of the Contract Documents and have resulted in an inferior or unsatisfactory performance, that work, materials and/or equipment shall be removed and replaced or otherwise be brought into strict compliance with the requirements of the Contract Documents by and at the sole cost and expense of the Contractor.
- C. Adjustment to Contract Price. In the event that the Construction Manager finds that any of the Work performed or any of the materials furnished or equipment supplied, or any of the finished Work in which any of such materials are used or any of such equipment is installed, are not in strict

conformity with the requirements of the Contract Documents but have not resulted in an inferior or unsatisfactory performance, the Construction Manager shall determine the acceptability of the Work, and in the event that the Manager decides to accept that Work shall obtain from the Contractor by a change order an appropriate downward adjustment in the Contract Price.

3.3 Discrepancies In And Descriptions Of The Contract Documents

- A. Notice of Contract Document Errors. Prior to the execution of any of the Work, the Contractor shall review and check all Drawings and Specifications. In the event that the Contractor discovers any error, discrepancy or omission in or any conflict between any of the Contract Documents, the Contractor shall immediately notify the Construction Manager, who will then make such corrections thereto and render such interpretations thereof as the Manager may deem necessary to fulfill the intent of the Contract and provide for the proper execution of the Work thereunder.
- B. Incorporation of all Contract Documents. The Contract Drawings will, in general, show dimensions, locations and types of construction, while the Contract Specifications will reflect the quality, quantity and other requirements of the Work. Any thing called for on the Drawings but not reflected in the Specifications, or vice versa, shall be construed as having been fully set forth by both. Work not particularly detailed, marked or specified shall be performed the same as similar parts of the Work that are so detailed, marked or specified. The Drawings, in general, are to scale, but figured dimensions shall always be followed and Drawings shall not be scaled.

3.4 Cooperation By Contractor

- A. Supervision of Project. The Contractor shall at all times maintain competent and efficient supervision of the Work and use the Contractor's best skill and coordinating ability in performing the Work. The Contractor shall give the Work the constant attention necessary to facilitate its timely progress and shall cooperate fully with the Construction Manager and inspectors in every way possible.
- B. Maintenance of Documents. The Contractor shall: (1) at all times maintain at the Work site one complete set of Contract Documents; (2) carefully study and compare all project drawings, specifications and other Contract Documents and check them against conditions existing or being created during the Work; (3) at once report to the Construction Manager any error, inconsistency or omission between or among such documents or between any of those documents and conditions at the site.
- C. Superintendent Required. The Contractor shall assign to the Work, as the Contractor's agent, a Superintendent. The Superintendent shall have full authority to execute the orders or directions of the Construction Manager on behalf of the Contractor without delay, and to promptly supply such materials, equipment, tools, labor and incidentals as may be required for the performance of the Work in a timely and efficient manner. Such superintendence shall be furnished regardless of the amount of Work sublet. Said Superintendent shall be on the project site at all times when the Work is

in progress. If at any time the Superintendent is not on the Work site, the foreman shall assume the full authority of the Superintendent for purposes of the Work.

3.5 Contractor Coordination And Cooperation With Utilities

- A. Location of Utilities. It is understood and agreed that the Contractor has taken into consideration in preparing its bid all of the indicated permanent and temporary utility appurtenances, in their present or relocated positions, and that no additional compensation will be allowed for delay, inconvenience or damage sustained by the Contractor due to any interference from such utility appurtenances, the operation of moving them or the making of new connections thereto if required by the Contract Documents. The Contractor warrants that it contacted Miss Utility prior to submitting its bid and is aware of the location of on-site utilities.
- B. Notice to Utilities. The Contractor shall have responsibility for notifying all affected utility companies and Miss Utility prior to performing any Work on their utilities and shall cooperate with them in achieving the desired results. All damage to utility facilities caused by the Contractor's operations shall be the responsibility of the Contractor.
- C. Protection of Existing Utilities. At points where the Contractor's operations are being performed adjacent to or in the vicinity of the properties of railway, telegraph, telephone, water and power companies or other surface, overhead and underground installations, damage to which might result in expense, loss or inconvenience, Work shall not be commenced until all arrangements necessary for the adequate and complete protection of such have been made by the Contractor.
- D. Cooperation with Utilities. The Contractor shall cooperate with the owners of any underground or overhead utility lines in their removal and rearrangement operations in order that those operations may progress in a reasonable manner, that relocation or rearrangement Work may be reduced to a minimum and that services rendered by those parties will not be unnecessarily interrupted.
- E. Damage to Utilities. In the event of an interruption of any utility service arising as a result of its accidental breakage or of its being exposed or unsupported, the Contractor shall promptly notify the proper authority and fully cooperate with it in achieving the timely restoration of service. No Work shall be undertaken around fire hydrants until provisions for continued water service have been approved, by the local fire authority, and established.

3.6 Contractor Coordination And Cooperation With Other Contractors

- A. Concurrent Work. The Commission shall have the right, at any time, to contract for and perform other work on, near, over or under the Work provided for by this contract. In addition, other overlapping work or work on adjoining projects by other contractors may be performed during the term of the Contract under the jurisdiction of another State, county or municipal authority. The Contractor shall cooperate fully with any and all such other contractors as may be necessary and shall carefully fit the Work to theirs as may be required by the Contract Documents or directed by the Construction

Manager. Such cooperation by the Contractor shall include, but not be limited to:

1. Arrangement and conduct of work;
 2. Storage and disposal of materials, etc., by each in such manner as to not unnecessarily interfere with or hinder the progress of the Work being performed by other contractors.
- B. Disputes. The Contractor agrees that in the event of a dispute as to cooperation or coordination with an adjacent contractor, the Commission will act as referee and its decisions will be binding. The Contractor agrees to make no claims against the Commission for any inconvenience, delay or loss experienced because of the presence and operations of other contractors.

3.7 Authority And Duties Of Inspectors

- A. Authority.
1. Commission Inspectors shall be authorized to inspect all Work done and all material furnished. Such inspections may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials to be used. The Inspector is not authorized to revoke, alter or waive any requirements of the Contract, nor is the Inspector authorized to approve or accept any portion of the project. The Inspector is authorized to call to the attention of the Contractor any failure of the Work or materials to conform to the requirements of the Contract, and shall have the authority to reject materials and suspend the Work until any questions at issue can be referred to and decided by the Construction Manager. Inspectors shall perform their duties at such times and in such manner as will not unnecessarily impede progress on the Contract.
 2. Regulatory Inspectors. Regulatory inspectors review the Contractor's Work for compliance with state and local regulatory agency requirements. Their approval does not constitute express or implied acceptance on behalf of the Commission.
- B. Disputes. The Inspector shall in no case act as foreman for or perform other duties for the Contractor, nor interfere with the management of the Work by the Contractor. Any advice, instruction, direction or other order which the Inspector may give the Contractor shall not be construed as being binding upon the Construction Manager in any way or releasing the Contractor from fulfilling all of the terms of the Contract.
- C. Limits of Authority. Where there is disagreement between the Contractor and the Inspector, the Inspector will immediately direct the Construction Manager's attention to the issue of disagreement and the Construction Manager will resolve the issue. If the Contractor refuses to comply with the Construction Manager's direction in that regard, the Construction Manager will prepare and deliver in writing to the Contractor, by mail or otherwise, a written order suspending the Work pending the resolution of the dispute. As soon as the Inspector is advised of the delivery of the shutdown order, the Inspector shall immediately leave the site of the Work and any Work performed during the Inspector's absence will not be accepted or paid for and may be required to be removed and disposed of at the Contractor's expense.

3.8 Inspection Of The Work

- A. Generally. All materials, equipment and each part or detail of the Work shall be subject at all times to inspection by the Construction Manager or an authorized representative, and the Contractor will be strictly held to the standards of quality for materials and workmanship established by the Contract. Such inspections may include mill, plant or shop inspection, and any material or equipment furnished under the Contract is subject to such inspections. The Construction Manager or an authorized representative shall be allowed access to all parts of the Work and shall be furnished with such information and assistance by the Contractor as is required in order to make a complete and detailed inspection. All costs of maintenance during construction and before final acceptance shall be included in the bid and the Contractor will not be paid any additional amounts for such Work.
- B. Review of Covered Work. If the Construction Manager requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore said portions of the Work to the standards required by the Contract. Should the Work thus exposed or examined prove acceptable, adjustments in Contract Time and price will be made pursuant to Section 2.8 for the uncovering or removing and the replacing of the covering or making good of the parts removed. Should the Work so exposed or examined prove unacceptable, the uncovering or removing and replacing shall be at the Contractor's expense.
- C. Special Testing or Approval. If the Specifications, the Commission's instructions, or the laws, ordinances or regulations of any public authority require any Work to be specially tested or approved, the Contractor shall give the Commission timely notice of its readiness for inspection and, if the inspection is to be performed by another authority, the date fixed for such inspection. Inspections by the Commission shall be made promptly and, where practicable, at the source of supply. Any Work covered without the approval of the Construction Manager must, if required by the Construction Manager or the Commission, be uncovered for examination at the Contractor's expense.

3.9 Removal Of Defective Work

- A. Generally. Any Work or materials which do not conform to the requirements of the Contract will be considered unacceptable, unless otherwise determined acceptable under the provisions of Section 3.2.
- B. Contractor Repair or Replacement. All unacceptable or defective Work, whether the result of poor workmanship, the use of defective materials, damage through carelessness or any other cause, found to exist shall be removed and replaced by Work and materials which do conform to the requirements of the Contract or shall otherwise be remedied in an acceptable manner authorized by the Construction Manager.
- C. Commission Repair or Replacement. Upon the failure of the Contractor to comply promptly with any order of the Construction Manager made under the provisions of these General Conditions, the Construction Manager shall have the authority to cause defective Work to be remedied or removed and

replaced and to have unauthorized Work removed, and to deduct the cost of doing so from any monies due or to become due the Contractor under this Contract.

3.10 Load Restrictions

- A. The Contractor shall comply with all State and local requirements pertaining to the speed, size and weight of motor vehicles.
- B. The Commission will indicate in the Contract any load restrictions known to it regarding any road or structure within the vicinity of the Work.
- C. The Contractor shall take into account any and all posted bridges, the crossing of which might be contemplated by the Work under the Contract. No loads in excess of posted limits will be allowed during the prosecution of the Work, unless the required permits are obtained from the appropriate State and local governmental agencies.
- D. The Contractor shall consider the possible detrimental effects of operating heavy paving and grading equipment contiguous to retaining walls, pipe culverts, arches and forms for concrete work, as well as on structures existing prior to this Contract.
- E. The Construction Manager shall have the right to limit the passage of heavy equipment (plus loads) when such passage or usage is causing apparent or visible damage to embankments, paving, structures or any other property.

3.11 Maintenance Of Work During Construction

- A. Generally. The Contractor shall maintain the Work throughout its construction and until acceptance. This maintenance shall be continuous and effective, and shall be prosecuted with such equipment and forces as to insure that all parts of the Work are kept in satisfactory condition at all times and protected from damage of any kind from external sources.
- B. Drainage. Particular attention shall be given to drainage, both permanent and temporary. The Contractor shall use all reasonable precautionary measures to avoid damage or loss that might result from accumulations and concentrations of drainage water and material carried by such water, and such drainage shall be diverted or dispersed when and as necessary to prevent damage to excavations, embankments, surfaces, structures or property. Suitable measures shall be taken by the Contractor to prevent erosion of soil in all construction areas. Such measures shall be in compliance with the requirements of all governmental or regulatory entities having jurisdiction over the site of the Work.
- C. Work Stoppages. In the event that the Contractor's Work is halted by the Commission or the Construction Manager for failure to comply with the provisions of the Contract, the Contractor shall maintain the entire project as provided for herein and also provide ingress and egress for local residents or tenants adjacent to the project site, tenants of the project site and the general public as may be necessary during the period of suspended Work or until the Contractor has been declared to be in default.
- D. Traffic Management. On projects where traffic flow is to be maintained, the Contractor shall be responsible for the repair and restoration of all traffic

damage to Work which has been either partially or totally completed until such time as the Work is accepted by the Commission.

3.12 Failure to Maintain Entire Project

The failure on the part of the Contractor to, at any time, comply with the provisions of Section 3.11 shall result in the Commission notifying the Contractor to comply with the required maintenance provisions. In the event that the Contractor fails to thereafter remedy any unsatisfactory maintenance within twenty-four (24) hours after receipt of such notice, the Commission will immediately proceed to itself maintain the Work, and the entire cost of all such maintenance will be deducted from monies due or to become due the Contractor.

3.13 Acceptance For Maintenance

- A. Partial Acceptance for Maintenance. If at any time during the performance of the Work the Contractor substantially completes a unit or portion of the Work, the Contractor may request that the Construction Manager make an inspection of such work. If the Construction Manager finds upon inspection that the Work has been satisfactorily completed in compliance with the Contract, the Manager may accept that Work as being complete and the Contractor may be relieved of further maintenance responsibility for that work. Partial acceptance for maintenance will only be considered when the Commission in its sole discretion feels that such action is in the public interest. Such partial acceptance for maintenance shall in no way void or alter any of the terms of the Contract.
- B. Final Acceptance for Maintenance. Upon due notice from the Contractor of completion of the entire project, the Construction Manager shall make an inspection. If upon such inspection all construction provided for and contemplated by the Contract is found to have been satisfactorily completed in compliance with the Contract, such inspection shall constitute the final inspection and the Construction Manager shall assume responsibility for maintenance of the Work as of the date, with the Contractor being notified of such acceptance in writing at that time. After acceptance for maintenance the Commission will assume all responsibility for maintenance, except where otherwise provided by the Contract.
- C. Inspection Prior to Acceptance. If at any construction inspection any Work, in whole or in part, is found to be unsatisfactory, the Construction Manager shall give the Contractor the necessary instructions as to the Work required for final completion and acceptance for maintenance. The Contractor shall comply with and execute such instructions. Upon completion of such Work another inspection shall be made, which shall constitute the final inspection if the Work is then found to have been completed satisfactorily. At that time, the Construction Manager shall make the acceptance for maintenance and the Contractor shall be notified as aforesaid.
- D. Final Acceptance. Unless otherwise provided by the Contract, acceptance by the Commission shall be made as promptly as practical after completion and inspection of all Work required by the Contract, or that portion of the Work that the Construction Manager determines can be accepted separately.

Acceptance shall be final and conclusive except as regards latent defects, fraud, such gross mistakes as may amount to fraud, the Commission's rights under any warranty or guarantee provisions of the Contract, and any claims or counterclaims reserved by the Commission.

3.14 Owner's Right To Perform Work

Should the Contractor fail or neglect to diligently prosecute the Work properly or to perform any provision of this contract, the Construction Manager may, upon three days written notice to the Contractor, make good such deficiencies and deduct the cost thereof from the monies then or thereafter due the Contractor.

3.15 Claims

- A. Notice of Claim. Unless a shorter period is provided for by applicable statute, regulation or this contract, the Contractor shall file a written notice of any claim for an extension of time, equitable adjustment, extra compensation, damages or other additional compensation arising as a result of any action or failure to act of the Commission, its agents and employees, or for any other matter arising under or related to the performance of the Contract, with the Construction Manager within ten (10) calendar days after the basis for the claim is first known or should have been known, whichever is earlier.

The Contractor shall file written notice of a delay claim within five (5) days of the act or omission causing the delay to commence.

Contemporaneously with, or within ten (10) calendar days of the filing of any such notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Construction Manager its written claim, containing the following information:

1. An explanation of the claim, including references to all Contract provisions upon which it is based;
 2. The amount of the claim;
 3. The facts upon which the claim is based;
 4. All pertinent data and correspondence that the Contractor relies upon to substantiate the claim; and
 5. A certification by a senior official, officer or general partner and authorized representative of the Contractor or subcontractor, as applicable, stating that to the best of the person's knowledge and belief the claim is made in good faith, that the supporting data is accurate and complete, and that the amount requested accurately reflects the contract adjustment for which the Contractor and certifying person believe the Commission is liable.
- B. Supporting Data. The claim shall also contain itemized supporting data for each of the elements of cost which the Contractor claims it has incurred or will incur. This data shall be in sufficient detail to permit analysis by the Commission of material, labor, equipment, subcontract and overhead costs, as well as profit, and shall include all Work covered by the claim, whether

- deleted, added or changed. Subcontract costs shall be supported by similar detailed data.
- C. Waiver. A notice of claim or a claim that is not filed within the prescribed time will be waived.
 - D. Contract Work. Pending resolution of a claim the Contractor shall proceed diligently with the performance of the Contract.
 - E. Claim Based on Construction Manager's Failure to Act. Whenever it appears to the Contractor that, due to the exigencies of the Work or some emergency involving the Work, the Contractor is about to incur additional costs or suffer a delay in the performance of the Work as a result of the failure or refusal of the Construction Manager to issue direction, instruction or authorization necessary for the performance of changed or additional work, the Contractor shall immediately (but in no event more than two (2) days after the basis for the claim is first known or should have been known, whichever is earlier) notify the Construction Manager in writing of such circumstance, indicating both the action required of the Construction Manager and the time by which such action is required in order to avoid incurring such additional costs and/or delay. In the absence of such notice to the Construction Manager the Contractor shall have no right of entitlement to any such additional costs or extensions of time and any claim by the Contractor for such will be waived.
 - F. Claim Based on Stop Work Order. If the Contractor receives a stop-work order from a licensing or permitting regulatory agency as a result of the Contractor's acts or omissions in performing the contract, the Contractor shall abide by the changes ordered by the regulatory agency and will not be entitled to a claim for the cost of labor and materials incurred. Contractor will not be entitled to compensation for delay under this paragraph.
 - 1. Under no circumstances will overhead or profit be permitted as items of a claim when such overhead or profit are for periods during which a "Stop Work" order is in effect due to an act, error or omission for which the Contractor is responsible.
 - 2. No profit or overhead, including rental of equipment and the salaries of supervisory personnel, will be allowed the Contractor for any stoppage of Work assertedly caused by the Commission when written notice of such stoppage, or impending stoppage, is not given reasonably in advance to permit the Commission to prevent such stoppage.
 - G. Excusable Delay. No claim for extra costs will be granted which includes costs of delays or Work stoppage due to strikes, lockouts, fire, unusually severe weather, avoidable casualties or damage, or delay in transportation for which the Commission or its agents are not responsible. Only time extensions for such causes of delay will be granted.
 - H. Bond Coverage. The Commission will not make payment for increased Payment or Performance Bond premiums as a result of any act or omission by the Commission which results in a claim.

3.16 Disputes

- A. Generally. Except as may otherwise be provided by any applicable statute or regulation, all disputes arising under or as a result of the performance of this Contract, including changes thereto and the breach thereof, which are not

resolved by the mutual agreement of the parties shall be resolved in accordance with this article. As used herein, "claim" means a written demand or assertion by one of the parties to the Contract seeking, as a legal right, the payment of money, adjustment or interpretation of any contract term, or other relief under or relating to the performance of this Contract.

1. A voucher, invoice or request for payment that is not in dispute when submitted is not a claim under this article.
 2. A claim by a contractor shall be made in writing and submitted to the Construction Manager in accordance with Article 3.15 hereof for decision. A claim by the Commission against the Contractor shall also be subject of a decision by the Construction Manager.
- B. Appeal Process. When a controversy between the parties cannot be resolved by mutual agreement, the Contractor shall submit a written request for a final decision of such to the Construction Manager. The written request shall set forth all the facts surrounding the controversy. The Construction Manager shall forward the claim to the Commission's Finance Department for a decision.
- C. Final Decision. The Finance Department shall render a written final decision of all claims within ninety (90) days of receipt of the Contractor's written claim, unless a longer period is necessary to resolve the claim. Those decisions shall be furnished to the Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of its actual receipt by the Contractor. The Finance Department's decision shall be deemed the final action of the Commission. If a decision is not issued within ninety (90) days of the filing of the claim with the Construction Manager, the Finance Department shall notify the Contractor of the time within which a decision will be rendered.
- D. Judicial Recourse. The Finance Department's decision of any Contractor appeal shall be final and conclusive unless the Contractor thereafter brings suit against the Commission in accordance with the applicable statutes in the Maryland Circuit Court having jurisdiction over the matter.
- E. Pursuit of Work Pending Final Decision. Pending the decision of a claim by the Finance Department, or the conclusion of any litigation of that claim by the Contractor, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Construction Manager's instructions or Final Decision.

4. CONTROL OF MATERIALS

4.1 General

- A. Notice of Sources. All materials shall meet all quality requirements of the Contract. In order to expedite the inspection and testing of materials the Contractor shall, as soon as possible after receipt of notification of award of the Contract, notify the Construction Manager in writing of the sources from which the Contractor proposes to obtain all materials requiring approval, testing, inspection or certification prior to incorporation into the Work.
- B. Standard of Materials and Construction. Materials include all manufactured products and processed and unprocessed natural substances required for

completion of the Contract. The Contractor is assumed to be thoroughly familiar with the materials required and their limitations, as to use, as well as requirements for their connection, setting, maintenance and operation. Whenever an article, material or equipment is specified and a fastening, furring, connection (including utility connections), access hole, flashing closure piece, bed or accessory is normally considered essential to good quality construction installation, such shall be included as if fully specified. Nothing in the Specifications shall be interpreted as authorizing any Work in any manner contrary to applicable laws, codes or regulations.

- C. Approval. All materials are subject to the Construction Manager's approval as to conformity with the Specifications, quality, design, color, etc. No Work for which such an approval is necessary shall be performed until a written approval is given by the Construction Manager. Approval of a subcontractor or supplier, as such, does not constitute an approval of any material which is other than that provided for by the Specifications.
- D. New Materials. Unless otherwise specified, all materials shall be new. Old or used materials may not be utilized as substitutes for new ones, regardless of their condition or repair, unless approved in writing by the Construction Manager.
- E. Quality. Unless otherwise specified, all materials shall be of the best quality of their respective kinds.
- F. Samples. The Contractor shall, as directed, furnish for approval all samples. The materials used shall be the same as the approved samples.
- G. Proof of Quality. The Contractor shall, if requested, furnish, either before or after installation, satisfactory evidence as to the kind and quality of all materials. The Contractor shall pay for any tests or inspections called for in the Specifications and any other tests deemed necessary for "Substitutions," as set forth in Section 4.5 of these General Conditions.
- H. Standard Specifications. When no specification is cited and the quality, processing, composition or method of installation of a thing is only generally referred to, then the pertinent provisions of the latest edition of the Montgomery County or Prince George's Building Code apply. Where the applicable Building Code is silent, then:
 - 1. For items not otherwise specified below, the pertinent provisions of the latest edition of the applicable American Society for Testing Materials specifications constitute the governing specification.
 - 2. For items generally considered as plumbing, and those items requiring plumbing connections, the applicable portions of the latest edition of the Washington Suburban Sanitary Commission specifications constitute the governing specification.
 - 3. For items generally considered as heating, refrigeration, air-conditioning or ventilating, the applicable portions of the latest edition of the ASHRAE Handbook published by the American Society of Heating, Refrigerating and Air- Conditioning Construction Managers, Inc. constitute the governing specification.
 - 4. For items generally considered as site work, the applicable portions of the Maryland SHA Standard Specifications constitute the governing specification.

5. For items generally considered as electrical, the applicable provisions of the latest edition of the National Electrical Code constitute the governing specification.
6. For items generally considered as fire protection, the applicable portion of the latest edition of the National Fire Protection Association Code constitute the governing Specification.
7. For items generally considered as drainage work the pertinent provisions of the Montgomery or Prince George's County Department of Transportation specifications apply.
8. For items generally considered as stormwater management and sediment control, the pertinent provisions of the Soil Conservation Service and Montgomery County or Prince George's County Department of Environmental Protection standards apply.

4.2 Storage And Handling Of Materials

- A. Generally. Materials shall be so stored as to assure the preservation of their quality and acceptability for the Work. Stored materials, even though approved before storage, may again be inspected prior to their use in the Work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the Work site may be used for storage purposes and for the placing of the Contractor plant and equipment; such storage areas must, however, be restored to their original condition by the Contractor at the Contractor's expense.

All materials and/or electrical equipment delivered to the job site shall be stored on pedestals, above ground and under roof or other approved covering. All enclosures for equipment shall be weatherproof. Any motors which are not totally enclosed and dry type transformers that are involved in the Work, shall be stored in a heated area with a minimum temperature of fifty (50) degrees. All valves shall be stored under roof on wood pedestals, above ground. All insulation shall be stored under roof or in trailers, adequately protected from the weather. The Contractor shall follow all written instructions and recommendations of the manufacturer and all requirements of the Construction Manager regarding the oiling, protection and maintenance of equipment during storage. The Contractor shall be solely and completely responsible for the storage and care of equipment and materials. Material not properly stored prior to installation shall not be considered for payment.

Materials shall be handled in such a manner as to preserve their quality and acceptability for the Work.

- B. Tools and Equipment. The Contractor shall confine tools and equipment and the storage of materials to the area delineated by the Contract Documents as the "Limit of Contract." The Contractor shall not load or permit any part of a structure to be loaded with a weight that will endanger the safety of the structure or any part thereof.
- C. Explosives.

1. Explosives shall not be stored upon any property belonging to the Commission.
 2. The Contractor shall receive prior written approval from the Construction Manager before using explosives on any project; the approval may stipulate time, place and quantity to be used and manner of use.
 3. The Contractor shall assume all responsibility for injury to persons or property damage which may result from the use or transportation of explosives, as well as for complying with any and all ordinances, regulations and restrictions relating to the use of explosives.
- D. Paints.
1. Oil base paints and inflammable liquids shall not be stored in large quantities on the Work site. Containers shall be limited to the five gallon size. Any liquid with a flash point of less than one hundred (100) shall be contained in safety cans, UL approved. Liquids with a higher flash point shall be stored in rigid cans.
 2. Oily rags, waste, etc. must be removed from the work site at the close of each working day.

4.3 Unacceptable Materials

- A. Generally. Materials represented by samples taken and tested in accordance with specified tests and failing to meet required values shall be considered to be defective regardless of prior tests or approvals.
- B. Removal from Site. Unless otherwise allowed by the Construction Manager, as set forth below, defective materials shall be removed from the site. Any tags, stamps or other markings that imply conformance with the Specifications shall be removed or obliterated.
- C. Retests. Where defects can be corrected the Contractor may propose such corrective action as the Contractor deems appropriate to the Construction Manager. The Construction Manager may approve the corrective action, but in so doing does not assume responsibility for the success thereof. Retests will be made to determine the acceptability of the material after corrective measures have been taken. No person other than the Construction Manager may change any provision of the Specifications or the Contract without written authorization.
- D. Costs. The cost of removing, replacing and/or correcting defective materials is solely the responsibility of the Contractor. The cost of repairing or replacing other materials damaged by the removal, installation and/or correction of defective materials is solely the responsibility of the Contractor.

4.4 Owner Furnished Material Or Equipment

- A. Generally. The Contractor shall furnish all materials required to complete the Work, except for those specified to be furnished by the Commission.
- B. Materials Furnished by Commission. Materials to be furnished by the Commission, if any, will be delivered or made available to the Contractor at the point or points specified in the Special Provisions. The cost of handling and placing all materials after they have been delivered to the Contractor shall be considered as being included in the contract price. The Contractor

will be held responsible for all Commission furnished material delivered to him, and deductions will be made from monies due him in order to make good any shortages and deficiencies, from any cause whatsoever, any damage which may occur after delivery to him, and for any demurrage charges.

- C. Inspection and Acceptance. In any case where materials are supplied by the Construction Manager and incorporated into the Work by the Contractor, inspection and acceptance of such materials will not be a prerequisite for acceptance of the final product as the product pertains to these items.

4.5 Substitutions

- A. Notice of Intent to Substitute. Should the Contractor desire to substitute another material for one or more specified by name the Contractor shall apply, in writing, for such permission and state the credit or extra involved in the use of such material. The Construction Manager will not consider the substitution of any material different in type or construction methods unless such substitution effects a benefit to the Commission.
- B. Prior Written Approval Required. The Contractor shall not submit for approval materials other than those specified without a written statement that such a substitution is proposed. Approval of a "substitute material" by the Construction Manager, where the Contractor has not designated such material as a "substitute," shall neither be binding on the Commission nor release the Contractor from any obligation under the Contract, unless the Commission approves such "substitution" in writing.

4.6 Approved Equals

The terms "Or Equal," "Equal" and "Approved Equal" are used as synonyms throughout the Specifications. They are, unless otherwise stated, implied in all references to any named manufacturers in the Specifications. Only materials fully equal will be considered. The Commission is the final judge as to equality.

4.7 Contractor's Options

When several products or manufacturers are named in the Specifications for the same purpose or use, the Contractor may select any of those so named. However, all of any units of a like type required for and used in the Work must be of the same material and manufacturer.

4.8 Testing

- A. Notice of Readiness. If either the Contract Documents, laws, ordinance, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Construction Manager timely notice of its readiness for such so that the Construction Manager may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.
- B. Special Inspection or Testing. If the Construction Manager determines that any Work requires special inspection, testing or approval which the Contract

Documents do not include, the Manager will instruct the Contractor to order such special inspection, testing or approval and the Contractor shall give notice as provided in subsection A. above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for any Design Professional's additional services made necessary by such failure; otherwise the Commission shall bear such costs and an equitable adjustment will be made.

- C. Certificates of Inspection. Required certificates of inspection, testing or approval shall be obtained by the Contractor and promptly delivered by him to the Construction Manager.

5. LEGAL RELATIONSHIPS AND RESPONSIBILITIES

5.1 Laws To Be Observed And Complied With

- A. Warranty of Good Business Standing. The Contractor hereby represents and warrants that the Contractor:
 - 1. is qualified to do business in the State of Maryland and will take such actions as, from time to time hereafter, may be necessary to remain so qualified;
 - 2. is not in arrears with respect to the payment of any monies due and owing to the State of Maryland or any political subdivision thereof, or any departments or units of such, including but not limited to the payment of taxes and employee benefits, and shall not become so in arrears during the term of this contract;
 - 3. is currently in compliance with all Federal, State and local laws, regulations and ordinances applicable to the Contractor's activity and obligations under this contract. The Contractor will keep fully informed of all Federal, State and local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having any jurisdiction or authority over the Work, which in any manner affect those engaged or employed on the Work, or which in any way affect the conduct of the Work. The Contractor will at all times observe and comply with all such laws, ordinances, regulations, orders and decrees, and protect and indemnify the Commission and its representatives against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree, whether by the Contractor or its employees or subcontractors.
 - 4. All requirements set forth in any federal assistance instruments applicable to this Contract shall be satisfied and, to the extent that the requirements which are specified in the assistance instrument conflict with any provision of the Contract or any State or local law, regulation or ordinance, the former shall control.
 - 5. The Contractor will comply with the provisions of the Workmen's Compensation Act and all Federal, State and local laws relating to hours of labor.
- B. Laws of Maryland. The provisions of this Contract will be governed by the laws of Maryland.

- C. Notices Required by Law. The Contractor shall give all notices and comply with all Federal, State and Local laws, ordinances, rules and regulations bearing on the conduct of the Work as indicated and described by the Contract Document.
- D. Non-Compliant Contract Documents. If the Contractor observes that the Drawings or Specifications are at variance with any law, the Contractor shall promptly notify the Construction Manager, and any necessary changes shall be made as provided for in the Contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Construction Manager, the Contractor shall bear all costs arising therefrom.

5.2 Permits And Licenses

- A. Commission Submittals. The Commission, or its authorized representative, will file with the appropriate State and/or local authority, Drawings and Specifications for the Work, as well as any other pertinent data reasonably proper for their information. The Contractor will be required to pay all necessary fees and post any necessary bonds to such authorities, and any regulatory agencies having jurisdiction, for inspection or for the privilege or right to execute the Work as called for in the Contract Documents, and the Contractor shall include the cost of said fees in its bid.
- B. Contract Licensing. The Contractor shall be licensed as required by the Section 17-601 et. Seq. of the Business Regulation Article of the Annotated Code of Maryland. It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractors comply with any construction safety and health standards and regulations promulgated by the Commissioner of Labor and Industry in accordance with the Maryland Occupational Safety and Health Act, Section 5-101 et. Seq. of the Labor and Employment Article of the Annotated Code of Maryland.

5.3 Patented Devices, Materials And Processes

If the Contractor is required or desires to use any design, device, material or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner, pay for all royalty or license fees, and file a copy of such agreement with the Commission. If no such agreement is made and filed as noted, the Contractor and the Surety shall indemnify and save harmless the Commission, any affected third party and any political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, materials or process, or any trademark or copyright, and shall indemnify, protect and save harmless the Commission, its officers, agents and employees with respect to any claim, action, cost or judgment for patent, trademark or copyright infringement arising out of the Contractor's purchase or use of materials, construction, supplies, equipment or services covered by this Contract; except that the Commission shall be responsible for all such loss when a particular process or product of a particular manufacturer or manufacturers is specified, unless

the Contractor has or should have had knowledge or information that the use of the process or article specified was an infringement of a patent, in which case the Contractor shall be responsible for such loss unless it promptly, and before any infringement, gives such information to the Commission.

5.4 Construction Safety And Health Standards

- A. Generally. It is a condition of this contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractors shall be licensed as required by the Section 17-601 et. Seq. of the Business Regulation Article of the Annotated Code of Maryland. It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractors comply with any construction safety and health standards and regulations promulgated by the Commissioner of Labor and Industry in accordance with the Maryland Occupational Safety and Health Act, Section 5-101 et. Seq. of the Labor and Employment Article of the Annotated Code of Maryland.
- B. Inspection. The Contractor and each subcontractor shall permit inspection, without delay and at any reasonable time, on any premises where the Work is being performed, by a federal or state inspector authorized to investigate compliance with the above mentioned federal and state statutes and regulations.
- C. Compliance. The Contractor agrees to correct any violations found to exist during such inspections within a reasonable time after the issuance of any citation, unless he contests the validity thereof through the appropriate administrative and judicial process.

~~D. — Maryland State Highway Administration (SHA) High-Visibility Apparel Requirements.—The Contractor and each subcontractor shall meet SHA High-Visibility Apparel Policy requirements and wear ANSI/ISEA Class III or higher safety garments, see Attachment #XX.~~

5.5 Public Convenience And Safety

The Contractor shall at all times conduct the Work in such a manner as to ensure the least practical obstruction to all forms of traffic and use. The convenience of the general public and of the residents along and/or adjacent to the improvement shall be provided for. Stored equipment and/or materials shall be placed so as to cause a minimum of obstruction to the public. Sprinkling shall be performed at the direction of the Construction Manager. The Contractor shall, unless otherwise specified, provide and maintain in a passable condition such temporary access, roads and bridges as may be necessary to accommodate traffic diverted from the project under construction, or using the project under construction, and shall provide and maintain in a safe condition temporary approaches to and crossings of the project. Existing Commission facilities planned to be removed, but which might be of service to the public during construction, are not to be disturbed until other and adequate provisions are made. Fire hydrants on or adjacent to the project shall be kept accessible to fire

apparatus at all times, and no material or obstruction shall be placed within fifteen (15) feet of any such hydrant. All footways, gutters, sewer inlets and portions of the project adjoining the Work under construction shall not be obstructed more than is absolutely necessary. All provisions of this paragraph are incidental to the contracted work, and no additional payment to the Contractor will be made for compliance with requirements in this paragraph. Work closed down for the winter, or at any other times, shall be left entirely accessible at all points to fire apparatus.

5.6 Barricades And Warning Signs

- A. Barricades. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, danger signals, signs and other traffic control devices, and shall take all necessary precautions for the protection of the Work and the safety of the public. All roadways and other Commission facilities closed to vehicular traffic shall be protected by effective barricades and obstructions shall be illuminated during hours of darkness with electrical lights.
- B. Signage. The Contractor shall erect warning signs in advance of any place on the project where operations may interfere with the use of the facility by vehicular traffic and at all other points where new Work crosses or coincides with existing roadways. Such warning signs shall be constructed and erected in accordance with the Manual on Uniform Traffic Control Devices, or as directed. The Contractor shall furnish, erect and maintain warning and direction signs in the number required by the Construction Manager and at locations designated by the Construction Manager throughout the limits of the project. For roadway traffic, the signs shall conform in every respect to the requirements of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways. Signs must be freshly painted and adequately reflectorized before being placed on any project. No Work may be performed or begun unless an adequate number of signs of the proper category are in place.
- C. Traffic Barriers. In cases where the Contractor's sequence of operations results in grade differentials which would be hazardous to vehicular traffic, the Contractor shall, at the direction of the Construction Manager, provide suitable substantial traffic barriers.
- D. Incidental Responsibility. All provisions of this paragraph are incidental to the contracted work, and no additional payment to the Contractor will be made for compliance with requirements in this paragraph.

5.7 Preservation And Restoration Of Property

- A. Generally. The Contractor shall not enter upon any other public or private property (outside of the right-of-way or project area) for any purpose without obtaining permission, and shall be responsible for the preservation of all public and private property, trees, monuments, signs and markers, and fences thereon, and shall use every precaution necessary to prevent damage or injury thereto. All Commission signs and markers that are affected by the Work shall be carefully removed when grading operations begin and be delivered to the Construction Manager. The Contractor shall take suitable

- precautions to prevent damage to underground or overhead public utility structures, shall carefully protect from disturbance or damage all land monuments and property marks referenced by a licensed surveyor. Repair or replacement of all damaged monuments shall be paid for by the Contractor.
- B. **Damage to Public or Private Property.** The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the Work resulting from any act, omission, neglect or misconduct in the Contractor's manner or method of performance and any defective Work or materials, and said responsibility shall not be released until the Work shall have been completed and accepted. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect or misconduct in the execution of the Work, or in consequence of the nonexecution thereof on the part of the Contractor, the Contractor shall restore, in an acceptable manner and at its own expense, such property to a condition similar or equal to that existing before such damage or injury occurred. In the case of any failure on the part of the Contractor to restore such property or make good such damage or injury, the Construction Manager may, upon 48 hours written notice, proceed to repair, rebuild or otherwise restore such property the Manager may deem necessary, and the cost thereof will be deducted from any monies due or which may become due to the Contractor.
 - C. **On-Site Security.** The Contractor shall continuously maintain adequate protection of all Work, Commission property and Contractor's trailer, tools and equipment from damage, and shall protect Commission property from injury or loss arising in connection with this Contract. Contractor must have an audible alarm system installed in any on-site trailer or storage shed. The Contractor shall repair and indemnify against any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or be caused by agents or employees of the Commission, and shall adequately protect adjacent property as provided by law and the Contract Documents.
 - D. **Tree Protection.** The Contractor shall protect all trees which are liable to injury by the moving, storing and working up of materials, and shall use no tree for any attachment or anchorage.
 - E. **Special Hazards.** The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workmen and the public, and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hood hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.
 - F. **Emergency Conditions.** In any emergency affecting the safety of life, or of the Work, or of adjoining property, the Contractor, without special instruction or authorization, is hereby permitted to act, at Contractor's discretion, to prevent such threatened loss or injury. If the Contractor is specifically instructed by the Construction Manager to do Work in an emergency, the Contractor shall do the Work and will be paid compensation as provided by Section 7.2 hereof.

5.8 Land, Air And Water Pollution

- A. Generally. The Contractor shall incorporate all permanent erosion control features into the Work at the earliest practicable time. Temporary pollution control measures not associated with permanent control features for the Work must be used to correct conditions that develop during construction that were not foreseen by the Contractor, or that are needed prior to the installation of permanent pollution control features, or that are needed temporarily to control erosion that develops during normal construction practices.
- B. Off-Site Measures. The Contractor's attention is directed to the fact that temporary pollution control may include measures off the Work site, where such work is necessary as a direct result of construction. The Commission shall be kept advised of all such off-site control measures taken by the Contractor, but such shall not relieve the Contractor of the basic responsibility for such work.
- C. Corrective Measures. In case of any failure on the part of the Contractor to control erosion, pollution and/or siltation, the Commission reserves the right to employ outside assistance or to use its own forces to perform the necessary corrective measures. All expenses incurred by the Commission in the performance of such duties for the Contractor shall be withheld from monies due or to become due to the Contractor.
- D. Verification of Compliance. The Contractor may be required to submit evidence to the Commission that the governing Federal, State and local air pollution control criteria have been and will be met. This evidence, and related documents, will be retained by the Commission for on-site examination
- E. Compensation for Stop-Work Orders. If the performance of all or any part of the Work is suspended, delayed or interrupted due to an order of a court of competent jurisdiction related to any environmental litigation, as defined below, the Construction Manager, at the request of the Contractor, shall determine whether the order is due in any part to acts or omissions required of the Contractor by the Commission as one of the terms of this contract. If it is determined that the order results in any part because of acts or omissions of the Contractor required by the terms of this contract, such suspension, delay or interruption shall be considered as if ordered by the Construction Manager in the administration of this contract under the terms of the Suspension of Work provisions of this contract. The period of such suspension, delay or interruption shall be considered excusable and an adjustment shall be made for any increase in the cost of and time required for the performance of this contract (excluding profit).
- F. "Environmental Litigation" Defined. The term "environmental litigation", as used herein, means a lawsuit alleging that the Work will have an adverse effect on the environment, or that the Commission has not duly considered, either substantively or procedurally, the effect of the Work on the environment.

5.9 Contractor's Liability Insurance

- A. Statutory Liability Coverage. The Contractor and its subcontractors shall maintain such insurance as will protect them from claims under the

- Workmen's Compensation Acts, U.S. Longshoremen's and Harbor Workers' Compensation Act, and the Federal Employers Liability Act by coverage with insurance companies or by methods acceptable to the State Insurance Commission, and by no other method, for damages which may arise from operations under this contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them.
- B. General Liability Coverage. The Contractor shall similarly so protect himself and the Commission from any claim for Bodily Injury, Liability and Property Damage Liability.
 - 1. The types and limits of coverage shall be specified in the Insurance Check List issued as part of the Instructions to Bidders for this project, and those types and limits are incorporated in full by reference herein.
 - 2. The above policies for Bodily Injury and Property Damage Liability Insurance shall be so written as to include Contingent Bodily Injury and Property Damage Liability Insurance to protect the Contractor against claims from the operations of subcontractors.
 - C. Motor Vehicle Coverage. The Contractor shall also carry coverages as required by State law for the operation of motor vehicles by employees of the Contractor or subcontractors as a consequence of the Contract.
 - D. Verification of Coverage. Certificates of the Contractor's insurance, containing evidence of the Hold Harmless Clause protecting the Commission, shall be filed with the Commission and shall be subject to its approval for adequacy of protection. No Work shall be commenced or performed at the site until the appropriate certificates of insurance are filed with and approved by the Commission. The Commission shall have the absolute right to terminate this Contract if the policy of insurance is canceled at any time for any reason and a new policy is not promptly obtained by the Contractor and approved by the Commission.

5.10 Contractor's Fire And Extended Coverage Insurance

- A. Generally. The Contractor shall carry, at its own expense, Builder's Risk Insurance for the full Contract amount, insuring against the perils of fire and lightning, and providing extended coverage for vandalism and malicious mischief, subject only to the minimum standard deductibles currently filed by the Insurance Service Office with the Maryland State Insurance Department. The Commission will provide no coverage during the construction period.
- B. Specific Endorsements. The Contractor's policy shall contain endorsements reading as follows:
 - 1. This policy also covers, as part of the provisional amount, architect's, engineer's and builder's fees.
 - 2. Permission is hereby granted for, as the case may be, use and possession or occupancy in whole or in part, pending acceptance by the Commission.
 - 3. It is the intent of this insurance to cover, specifically, all the Work being done under the Contract between the Insured's and, as to such Work, this policy shall be primary insurance and shall not contribute or claim contribution from any other insurance being carried, which by its terms

would also cover the property covered hereunder in the absence of this insurance.

4. Coverage afforded under this policy will not be canceled until at least fifteen (15) days prior written notice has been given to the Commission
- C. Verification of Coverage. Certificates of insurance shall be submitted to the Commission for review and approval and shall be held by it for the duration of the Contract.
- D. Duration of Coverage. The above insurance shall remain in full force and effect until such time as the Commission shall fully accept the Work covered by the Contract.

5.11 Relationship Between Contractor And Public Officials And Employees

- A. No Personal Liability for Commission Representatives. In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability imposed upon the Construction Manager or other authorized representatives of the Commission, it being understood that in all such matters they act solely as agents and representatives of the Commission.
- B. Gratuities. It shall be unethical for any person to offer, give, or agree to give any Commission employee or former Commission employee, or for any Commission employee or former Commission employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore. The Commission may terminate the right of the Contractor to proceed under this Contract if it is determined that any above referenced gratuities or offers of employment were or are being offered by the Contractor, or any agent or representative of the Contractor, to any Commission employee or former Commission employee.
- C. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- D. Termination for Improper Gratuities. In the event this Contract is terminated upon the grounds provided for in subsection B. hereof, the Commission shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the Contract by the Contractor, and (2) in addition to any other damages to which it may be entitled by law, the Commission may seek exemplary damages in an amount which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuity to any such representative or employee.

- E. Other Remedies. The rights and remedies of the Commission provided for by this section shall not be exclusive and are in addition to any other rights and remedies provided to it either by law or under this Contract.

5.12 No Waiver Of Legal Rights

- A. Generally. The Commission shall neither be precluded nor estopped by any measurement, estimate, certificate or payment made, either before or after the completion and acceptance of the Work, from showing the true amount and character of the Work performed and materials furnished by the Contractor, or that any such measurement, estimate, certificate or payment was erroneously or incorrectly made, or from showing that the Work or materials do not in fact conform to the requirements of the Contract. The Commission shall not be precluded or estopped, notwithstanding any such measurement, estimate, certificate or payment, from recovering from the Contractor or its sureties, or both, such damages as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither acceptance by the Commission, or any representative of the Commission, nor any payment for, acceptance of or any possession taken, in whole or in part, of the Work, nor any extension of time given by the Commission, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages.
- B. Non-Waiver of Enforcement. A waiver by the Commission of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

5.13 Covenant Against Contingent Fee

- A. Generally. The Contractor warrants that it has not employed or retained any person, partnership, corporation or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation or other entity, other than a bona fide commercial selling agencies, any fee or any other compensation contingent on the making of this Contract.
- B. Remedies for Breach of Covenant. For breach or violation of this covenant the Commission shall have the right to terminate this Contract without liability, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

5.14 Federal Participation

If the United States Government pays all or any portion of the cost of a project, the Work shall be subject to the inspection of the appropriate federal agency. Such inspection shall in no way make the federal government a party to this Contract and will not otherwise affect, in any way, the rights of either party hereunder.

Federal Funds are used for this project, but Davis Bacon rates do NOT apply. See **attached Federal Form 1273** for Federal-Aid Construction Contract Provisions.

5.15 Non-Discrimination In Employment

- A. Generally. The Contractor agrees:
1. Not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry or disability unrelated in nature and extent to any impairment which would preclude the performance of such employment, as provided in the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. This requirement includes compliance with Maryland's Governor's Order pertaining to the Code of Fair Practices, dated July 9, 1976, which bars discrimination based on political or religious opinion or affiliation.
 2. To include a provision similar to that contained in paragraph 1, above, in all subcontracts, except any subcontract for standard commercial supplies or raw materials.
 3. To post and to cause subcontractors to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this subsection.
 4. That any failure to include in any subcontract a provision requiring compliance with the above requirements of this subsection will render that agreement void ab initio, but any party thereto shall be entitled to receive the reasonable value of services performed and materials supplied thereunder. At its option the Commission may elect to compel the performance of any agreement not containing the required nondiscrimination provisions, and may limit recovery thereunder to the reasonable value of services performed and materials supplied.
 5. To include the substance of this entire Section 5.15 in all Contracts with its subcontractors.
- B. Sanctions for Non-Compliance. The Contractor also agrees that:
1. In the event of the Contractor's, or any subcontractor's, non-willful failure to comply with the nondiscrimination provisions of this Contract, the Commission may impose such sanctions upon the Contractor or subcontractor as it may determine to be appropriate, including but not limited to;
 - a. withholding of payment to the Contractor and/or for the subcontractor under the Contract until the Contractor and/or subcontractor complies; and/or
 - b. suspension, cancellation or termination of the Contract or subcontract in whole or in part.
 2. Where the Contractor willfully fails to comply with the nondiscrimination provisions of this Contract the Commission may, where the Contract is still executory in part, compel continued performances of the Contract, but it shall be liable only for the reasonable value of services performed and materials supplied from the date that the breach of contract was discovered or should have been discovered. Any sums previously paid by the Commission under the Contract shall be set off against the sums to become due as the Contract is performed.
 3. If any subcontractor willfully fails to comply with the nondiscrimination provisions, the Commission may require that the Contractor void the

subcontract, in which case both the Commission and the Contractor shall only be liable for the reasonable value of the services performed and materials actually supplied.

4. Any person, whether an employee, prospective employee or not, with information concerning violations of the requirements of this subsection may so inform the Commission, which may conduct an investigation of the charges. If the Commission concludes that the charges are true, it shall invoke the remedies set out in this subsection.

5.16 Compliance with the Commission's Anti-Discrimination Program

It is the policy of the Commission that minority, female and disabled-owned (MFD) subcontractors on Commission contracts not be discriminated against by prime contractors in the selection of subcontractors and in the performance of the work for the prime contractors.

- A. Verification of Compliance. The Contractor shall:
 1. Maintain such records as are necessary to confirm compliance with nondiscrimination in subcontracting component of the Anti-Discrimination Program. These records shall indicate the identity of MFD and non-MFD subcontractors employed on the Contract; the type of Work performed by each; and the actual dollar value of work, services and procurement achieved by each contractor and subcontractor.
 2. Submit information, with monthly cost breakdowns for progress payments, which indicate the dollar value of contracts awarded to MFD Firms and the payments to MFD firms as the Work occurs. This information will be submitted as a supplement to all applications for progress payments.
 3. Retain all records concerning subcontractor participation and make them available for inspection by the Commission for a period of three years after final completion of the Contract.
- B. Commission Right to Conduct Inspections and Ensure Compliance. The Commission will conduct inspections and investigations to confirm the Contractor's compliance with the terms of this section. If the Commission determines that the Contractor or its subcontractors are not in compliance with this section, the Commission will notify the Contractor of those measures which the Contractor must take to restore the Contractor to a state of compliance.
- C. Suspension and/or Termination. If the Contractor or its subcontractors fail to take timely corrective action, the Commission may, without additional cost to it, suspend the Contractor's performance of the Contract until such time as Contractor demonstrates to its satisfaction that Contractor can and will comply with the requirements of this section. If the Contractor continues or repeatedly fails, or refuses to comply with the requirements of this section, the Commission may terminate the Contract for default.
- D. Further Enforcement. The Fair Practices officer shall present any indication of false or misleading information in the documentary material submitted by the Contractor or its subcontractors to determine MFD status or participation compliance, or of material noncompliance in the Anti-Discrimination Program,

with an appropriate recommendation to the General Counsel for further investigation and possible legal action. The General Counsel may pursue any legal or administrative action including debarment of the violator through any established proceedings.

5.17 Conflict of Interest

- A. Definition. An employee may not participate in any procurement, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to it, if, to his knowledge, he, his spouse, parent, child, brother or sister has an interest therein or if any of the following is a party thereto:
1. Any business entity in which he has a direct financial interest of which he may reasonably be expected to know;
 2. Any business entity of which he is an officer, director, trustee, partner, or employee, or in which he knows any of the above listed relatives has such interest;
 3. any business entity with which he or, to his knowledge, any of the above listed relatives is negotiating or has any arrangement concerning prospective employment;
 4. any business entity which is a party to an existing contract with the official or employee, or which the official or employee knows is a party to a contract with any of the above named relatives, if the contract could reasonably be expected to result in a conflict between the private interests of the official or employee and his official duties;
 5. any entity, either engaged in a transaction with the Commission or subject to regulation by the Commission, in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if he may be reasonably expected to know of both direct financial interest;
 6. any business entity which the official or employee knows is his creditor or obligee, or that of any of the above named relatives, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the official or employee or any of the above named relatives.
- B. Blind Trusts. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest.
- C. Waivers. The General Counsel or designee within the Legal Department may grant a waiver from the conflict of interest provision upon making a written determination that the interests of the Commission so require or when the ethical conflict is insubstantial or remote.

5.18 Cost and Price Certification

- A. Certificate of Accuracy. By submitting cost or price information upon which negotiations or price discussions are to be based, the Contractor certifies that, to the best of its knowledge, information and belief, the information submitted is accurate, complete and current.

- B. Contractor Warranty for Price. The price under this Contract, and any change order or modification thereunder, including profit or fee, shall be adjusted to exclude any significant price increase occurring because the Contractor furnished cost or price information which was inaccurate, incomplete or not current.
- C. Records Retention. The Contractor shall retain and maintain all records and documents, including but not limited to cost or pricing data, relating to this Contract for three years after final payment by the Commission hereunder, or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the Commission at all reasonable times.
- D. Subcontractor Compliance. The Contractor shall include the provisions of subsection A. hereof in every subcontract.

5.19 Relation of Contractor and Subcontractors

- A. Generally. The Contractor agrees to include the following provisions in all subcontracts and supply contracts applicable to the Work unless specifically noted to the contrary in a subcontract approved in writing by the Commission.
 - 1. Subcontractor agrees to be bound to the Contractor by the terms of the Contract Documents, including but not limited to the Agreement, the General Conditions, the Drawings and the Specifications, and to assume toward the Contractor all obligations and responsibilities that the Contractor, by those documents, assumes toward the Commission.
 - 2. The subcontractor agrees to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 7 of these General Conditions.
 - 3. The subcontractor agrees to make all claims for extras, for extensions of time and for damages, delays or otherwise, to the Contractor in the manner provided for by these General Conditions for like claims by the Contractor upon the Commission.
 - 4. The subcontractor agrees, upon completion of its work, to promptly pay all labor, material suppliers, vendors, subcontractors and others, so as to permit simultaneous final payment by the Contractor.
- B. Reciprocal Agreements. The Contractor agrees to be bound to the subcontractor by all the obligations that the Commission assumes to the Contractor under the Contract Documents, including but not limited to the Agreement, the General Conditions, the Drawings and the Specifications, and by all the provisions thereof affording remedies and redress to the Contractor from the Commission.
- C. Schedule of Payments to Subcontractors. The Contractor also agrees:
 - 1. To pay the subcontractor under the schedule of values described in Article 7 of these General Conditions, the amount allowed to the Contractor on account of the subcontractor's work, to the extent of the subcontractor's interest therein.
 - 2. To pay the subcontractor so that at all times the Contractor's total payments shall be as large in proportion to the value of the Work done by him as the total amount certified to the Contractor is to the value of the Work done by him.

3. To pay the subcontractor to such extent as may be provided by the Contract Documents or the subcontract, if either of these provides for earlier or larger payments than the above.
4. To pay the subcontractor on demand for Work or materials as far as executed and fixed in place, less the retained percentage, at the time any invoice is issued, even though the Construction Manager fails to issue payment for any cause not the fault of the subcontractor.
5. To pay the subcontractor a just share of any fire insurance money received by the Contractor.
6. To make no demand for liquidated damages or penalty for delay in any sum in excess of such amount as may be specifically named in the subcontract.
7. To give the subcontractor an opportunity to be present and to submit evidence in any matter involving the subcontractor's rights.

5.20 Subcontracting

- A. **Non-Assignment Clause.** No portion of the Contract shall be subcontracted, assigned or otherwise disposed of except upon the written consent of the Construction Manager. Any assignment, subcontract or other disposition of all or part of this contract without the express written consent of the Construction Manager shall be null and void. Consent to subcontract, assign or otherwise dispose of any portion of the Contract shall not be construed to relieve the Contractor or surety of any responsibility for fulfilling all the requirements of the Contract.
- B. **Written Verification of Subcontractors.** The Contractor shall, as soon as practicable and before the execution of the Contract, notify the Construction Manager and the Commission in writing of the names of subcontractors proposed for the principal parts of the Work, and for such other parts thereof as the Construction Manager may direct, and shall not employ any subcontractor that the Construction Manager objects to as being incompetent or unfit.
- C. **Contractor Responsibility for Subcontractors.** The Contractor assumes the same responsibility to the Commission for the acts and omissions of all subcontractors, and of persons either directly employed by them as the Contractor does for the acts and omissions of persons directly employed by him.
- D. **No Commission Obligation to Subcontractors.** Nothing contained in the Contract Documents shall create any contractual relation between any subcontractor and the Commission, and nothing in the Contract Documents is intended to make the subcontractor a beneficiary of the Contract between the Commission and the Contractor. The Contractor and the subcontractor agree that nothing in the Contract Document shall create any obligation on the part of the Commission to pay to or to see to the payment of any sums to any subcontractor.
- E. **Non-Assignment of Payments Due.** The Contractor shall not assign any monies due or to become due to him hereunder without the previous written consent of the Commission.

5.21 Employees, Subcontractors and Work Conditions

- A. Qualification of Employees. Only personnel thoroughly trained and skilled in the tasks assigned to them may be employed on any portion of the Work. Any employee found to be unskilled or untrained in the Work shall be removed from the Work.
- B. Licensed Employees. When Municipal, County, State or Federal laws require that certain personnel (electricians, plumbers, etc.) be licensed, all such personnel employed on the Work shall be so licensed.
- C. Quantity of Labor. The Contractor shall employ, at all times, sufficient personnel to complete the Work within the time stated in the Contract.
- D. Work Areas. The Contractor shall confine the operations of employees and subcontractors to the limits of Work as provided for by the Contract Documents, law, ordinance, permits or directions of the Commission. Generally, the work area will be the same as any "Limit of Contract" line indicated in the Contract Documents.
- E. Methods and Quality.
 - 1. All workmanship shall be of good quality. Whenever the method of performing or manner of proceeding with the Work is not specifically stated in the Contract Documents, it is intended that the best standard practice be followed. Recommendations of the manufacturers of approved materials shall be considered a part of the Specifications and all materials shall be applied, installed, connected, erected, used, cleaned and conditioned as called for thereby. Such, however, does not remove any requirement in the Specifications which adds to the manufacturer's recommendations.
 - 2. All materials shall be accurately assembled, set, etc., as required by good construction practice, and shall be true to line, even, square, plumb, level and regularly spaced, coursed, etc. Under no circumstances, either in new or old work, shall any material be applied over another which has not been thoroughly cleaned, sanded or otherwise treated so as not to impair the finish, adhesion or efficiency of the next applied item.
 - 3. All the methods, procedures and results are subject to the Construction Manager's approval as to the finished result to be obtained. However, this is not to be interpreted as placing upon the Construction Manager any responsibility for management of the Work, which is solely the responsibility of the Contractor.
- F. Scheduling.
 - 1. The Contractor shall so schedule the Work as to ensure its efficient and uninterrupted progress, and to hold to an absolute minimum the cutting and patching of new Work. All cutting, patching and digging necessary to the execution of the Work is included in the Contract scope.
 - 2. The Contractor shall so schedule the construction to be performed by each group or trade that each installation or portion of the construction shall member with and join with all other new or old work, all as required for a complete installation according to accepted construction practice.
- G. Superintendent. The Contractor shall keep on the job site, at all times during the Work's progress, a competent, English-speaking superintendent and any necessary assistants. Prior to commencement of the Work, the Contractor

shall submit, in writing to the Commission, the name of the person it intends to employ as Superintendent for the execution of this Contract, with a statement of the proposed Superintendent's qualifications. This data will be reviewed by the Commission and an approval or rejection given in writing. Persons who have previously proven unsatisfactory on work executed for the Commission, or who are without proper qualifications, will not be approved. Should it become necessary to change the Superintendent, this procedure will be repeated. A single Superintendent will be permitted to superintend two or more jobs located at the same site or close to each other only when approved by the Commission in writing. The Superintendent shall represent the Contractor. All directions given to the Superintendent shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed, upon written request, in each case. Upon cause shown by the Commission the Superintendent shall be removed from the Work and a new Superintendent as described above and assigned to the Work.

- H. Discipline. The Contractor shall, at all times, enforce strict discipline and good order among the employees and shall not employ or permit to remain on the Work any unfit person. The Contractor shall enforce all instructions relative to the use of water, heat, power, no smoking and the control and use of fires as required by law and the Commission. Employees must not be allowed to loiter on the premises before or after working hours.
- I. Employee Safety. The Contractor shall designate a responsible member of its organization on the Work whose duty it shall be, in addition to any other duties, to prevent accidents and to enforce the standards of Section 5.4 of these General Conditions. The name and position of the person so designated shall be reported to the Commission, with a copy to the Construction Manager, by the Contractor prior to commencement of the Work.

6. PROSECUTION & PERFORMANCE

6.1 Notice To Proceed

After the Contract has been executed, the Commission will, within any time limit specified elsewhere in the Contract Documents, issue to the Contractor a "Notice to Proceed" with the Work, which will stipulate the time within which or the date upon which the Contractor is expected to begin Work. The Contract Time shall begin on the date stipulated in the Notice to Proceed. Work done prior to receipt of the Notice to Proceed is unauthorized and will neither be measured nor paid for.

6.2 Prosecution of the Work

- A. Time is of the Essence. All time limits stated in or indicated by the Contract Documents are of the essence to the Contract.
- B. Date of Commencement. The date of commencement of the Work is the date established in a Notice to Proceed signed by the Contract Administrator. The Contractor shall begin the Work promptly on the date or within the time

- specified in the Notice to Proceed and shall notify the Construction Manager at least 48 hours in advance of starting the Work.
- C. Time for Completion. It is hereby expressly understood and agreed by and between the Contractor and the Commission that the time stated by the Contract for the completion of the Work is a reasonable time, taking into consideration average climatic conditions and usual business conditions prevailing in the locality of the Work. The Contractor shall undertake Work only on Work days. The Construction Manager may authorize the Contractor to Work on non-working days for the convenience of the Commission.
 - D. Continuous Prosecution of the Work. After the Work has been started, it shall be prosecuted continuously on all acceptable working days, without stoppage, until the Contract is complete. Should prosecution of the Work, for any reason, thereafter be discontinued by the Contractor, the Contractor shall notify the Construction Manager of its intention to do so at least 24 hours in advance of both stopping and subsequently resuming operations. Said notifications shall be in writing.
 - E. Excusable Delay. If the Contractor is delayed at any time during performance of the Work by any act or neglect of the Commission or any of its officers, agents or employees, or by any separate contractor employed by the Commission, or by any change ordered in the Work, or by labor disputes, fire, unusual delay in transportation or unavoidable casualties, or by any cause which the Construction Manager determines may excuse the delay, the Contract Time shall be extended for such time as the Construction Manager finds appropriate.

6.3 Progress Schedule

- A. Generally. Within thirty (30) calendar days of receipt of the Letter of Intent of the Contract, or within ten (10) calendar days of receipt of the Notice to Proceed with the Work, whichever is earlier, and in any event before undertaking performance of any Work under the Contract, the Contractor shall prepare and submit to the Construction Manager a "Progress Schedule," prepared in accordance with the Critical Path Method or bar graph chart, as determined by the Construction Manager. The Progress Schedule shall show scheduling; the proposed order of Work; the periods of time during which the several parts thereof will be performed and the dates of completion for various portions of the Work; and the time required for completion of the Work. The Progress Schedule shall also include the dates for submittals to the Construction manager or Design Professions and the dates for the return of approved submittals. The Construction Manager shall review and either accept or reject the Progress Schedule and the Contractor shall perform no Work until either the Manager has accepted either the original or a revised Progress Schedule. The Contractor's Progress Schedule shall be used by the Construction Manager to monitor and establish the progress of the Work and the Contractor shall submit Updated Progress Schedules on a monthly basis to the Construction Manager.
- B. Commission's Acceptance Does Not Relieve Contractor's Obligation for Timely Completion. The Construction Manager's acceptance of the Contractor's Progress Schedule, and any updated Progress Schedules, shall

not constitute an approval of any such schedule and shall not be deemed to establish either the reasonableness or appropriateness of the schedule for either the management, progress or completion of the Work by the Contractor.

- C. Non-Payment for Non-Compliance. If the Contractor fails to submit any progress schedule within the time prescribed or requested, the Construction Manager may withhold approval of progress payments until such time as the Contractor submits the required schedule.
- D. Contractor's Obligation to Maintain Schedule. If, in the opinion of the Construction Manager, the Contractor falls significantly behind the accepted progress schedule, the Contractor shall take any and all steps necessary to improve progress. This may require the Contractor to increase the number of shifts, initiate or increase overtime operations, increase days of work during the week, increase the amount of construction plant, or all of such. The Construction Manager may also require the Contractor to submit supplemental Progress Schedules detailing the specific operational changes to be instituted to regain the accepted schedule. All actions required under this paragraph shall be made without additional cost to the Commission.
- E. Enforcement. Any failure of the Contractor to comply with the requirements of the Construction Manager under this provision shall be grounds for a determination by the Construction Manager that the Contractor is not prosecuting the Work with such diligence as will insure its completion within the Contract Time. Upon such determination, the Construction Manager may terminate the Contractor's right to proceed with the Work or any separable part thereof, in accordance with Section 6.11 of these General Conditions.
- F. Modification of Contract Time and Progress Schedule. The Contract Time and the Progress Schedule will only be adjusted and extended, notwithstanding any other provision of the Contract, for excusable delay to the Contractor's performance which actually affects and critically delays the Contractor's ability to timely perform and complete the Work.

6.4 Limitations Upon Contractor's Operations

The Contractor shall, at all times, conduct the Work in such a manner and in such a sequence as will assure the least inconvenience to and interference with the use of the facility by the public.

6.5 Labor Disputes

- A. Notice of Pending Delay. Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Construction Manager.
- B. Subcontractor Obligations and Contractual Requirements. The Contractor agrees to insert the substance of Section 6.5, including this paragraph B., in any subcontract hereunder as to which a labor dispute may delay the timely performance of the Contract. Each such subcontract shall also provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify

the next higher tier of subcontractor (or the Contractor), as the case may be, of all relevant information with respect to such dispute.

6.6 Clean-Up

The Contractor shall, at all times, keep the construction area, including storage areas, free from accumulations of waste material or rubbish and, prior to completion of the Work, remove any rubbish from the premises and all tools, scaffolding, equipment and materials not the property of the Commission. Upon completion of the construction, the Contractor shall leave the Work and premises in a clean, neat and workmanlike condition, satisfactory to the Construction Manager.

6.7 Suspension of Work

- A. Suspension for Convenience. The Construction Manager may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the Work for a period of time, as may be appropriate, for the convenience of the Commission.
- B. Suspension Caused by Construction Manager's Failure to Act. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed or interrupted by an act of the Construction Manager in the administration of the Contract, or by the Manager's failure to act within a reasonable time, an adjustment shall be made for any increase in the cost of or time required for the performance of the Contract (excluding profit) necessarily caused by such an unreasonable suspension. However, no adjustment shall be made under this clause for any suspension, delay or interruption to the extent that (1) performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or (2) for which an equitable adjustment is provided for or excluded under any other provision of the Contract.
- C. Notice of Claim. No claim under Section 6.7.B shall be allowed (1) for any cost incurred more than ten (10) days before the Contractor has notified the Construction Manager in writing of the act or failure to act involved, and (2) unless the claim, in an amount stated, is asserted in writing within ten (10) calendar days of the termination of the suspension, delay or interruption, but not later than the date of final payment under the Contract.
- D. Stop-Work Orders. If the Work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or of anyone employed by him, then the Contractor may, upon seven (7) days written notice to the Commission, suspend all Work and performance under the Contract and receive from the Commission payment for all complete Work.

6.8 Termination For Convenience

- A. Generally. The performance of Work under the Contract may be terminated by the Commission, in accordance with this clause, in whole or from time to time in part, whenever the Construction Manager shall determine that such termination is in the best interest of the Commission. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination

specifying the extent to which performance of the Work under the Contract is terminated and the date upon which such termination becomes effective.

- B. Process for Project Shut-Down. After receipt of Notice of Termination, and except as otherwise directed by the Construction Manager, the Contractor shall:
1. Stop all Work under the Contract on the date and to extent specified in the Notice of Termination.
 2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the Work under the Contract, if any, that is not terminated.
 3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination.
 4. Assign to the Commission in the manner, at the time and to the extent directed by the Construction Manager all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Commission shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 5. Settle all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, with the approval or ratification of the Construction Manager, to the extent the Manager may require, which approval or ratification shall be final for all the purposes of this clause.
 6. Transfer title and deliver to the Commission, in the manner, at the times and to the extent, if any, directed by the Construction Manager (a) the fabricated or unfabricated parts, Work in process, completed Work, supplies and other material produced as a part of or acquired in connection with the performance of the Work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information and other property which, if the Contract had been completed, would have been required to be furnished to the Commission.
 7. Use the Contractor's best effort to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Construction Manager, any property of the types referred to in paragraph 6 above; provided, however, that the Contractor (a) may not be required to extend credit to any purchaser and (b) may himself acquire any such property under the conditions prescribed by and at a price or prices approved by the Construction Manager; and shall be applied in reduction of any payments to be made by the Commission to the Contractor under the Contract or shall otherwise be credited to the price or cost of the Work covered by the Contract or be paid in such other manner as the Construction Manager may direct.
 8. Complete performance of such part of the Work as may not have been terminated by the Notice of Termination.
 9. Take any action that may be necessary, or that the Construction Manager may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and

in which the Commission has or may acquire an interest. The Contractor shall submit to the Construction Manager a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items for which disposition has been directed or authorized by the Construction Manager, and may request the Commission to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Commission shall accept title to such items and remove them or enter into a storage agreement covering the same; provided that the list submitted shall be subject to verification by the Construction Manager upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

- C. Submission of Termination Claim. After receipt of a Notice of Termination, the Contractor shall submit to the Construction Manager a termination claim, in the form and with the certification prescribed by the Construction Manager. This claim shall be submitted promptly, but in no event later than ninety (90) days from the effective date of termination, unless one or more extensions in writing are granted by the Construction Manager upon the request of the Contractor, made in writing, within the ninety (90) day period or authorized extension thereof. If the Construction Manager determines that the facts justify such action, the Manager may receive and act upon any termination claim at any time after the ninety (90) day period or any extension thereof. Upon any failure of the Contractor to submit a termination claim within the time allowed, or any extension thereof, the Construction Manager may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.
- D. Mutual Negotiation of Claim. Subject to the provisions of subsection C. hereof, the Contractor and the Construction Manager may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of Work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on Work done; provided that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Price, as adjusted for any changes and as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. The Contract shall be amended accordingly and the Contractor shall be paid the agreed amount. Nothing in subsection E. of this clause, which prescribes the amount to be paid to the Contractor in the event of the failure of the Contractor and the Construction Manager to agree upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this clause, shall be deemed to limit, restrict or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this subsection.
- E. Commission Determination of Claim Amount. In the event of the failure of the Contractor and the Construction Manager to agree, as provided in subsection

D., upon the whole amount to be paid to the Contractor by reason of the termination of Work pursuant to this clause, the Construction Manager shall pay to the Contractor the amounts, but without duplication of any amounts agreed upon in accordance with Paragraph D, determined by the Construction Manager as follows:

1. For completed supplies or services accepted by the Commission (or sold or acquired as provided in paragraph B.7. above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the Contract, appropriately adjusted for any saving of freight or other charges.
2. The total of
 - a. the costs incurred in the performance of the Work terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph E.1. hereof;
 - b. the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders, as provided in paragraph B.5. above, which are properly chargeable to the terminated portion of the Contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (a) above);
 - c. a sum, as profit and overhead on (a) above, determined by the Construction Manager to be fair and reasonable but not to exceed the percentages given in Section 7.2.A below. If, however, it appears that the Contractor would have sustained a loss on the Contract had it been completed, no profit shall be included or allowed under this subparagraph (c) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and
 - d. the reasonable cost of settlement accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to the Contract.
3. The total sum to be paid to the Contractor under paragraphs 1. and 2. of this subsection shall not exceed the original or adjusted Contract Price as reduced by the amount of payments otherwise made and as further reduced by the Contract Price of Work not terminated. Except for normal spoilage, and except to the extent that the Commission shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in paragraph E.1. And 2. (a) above, the fair value, as determined by the Construction Manager, of property that is destroyed, lost, stolen or

damaged so as to become undeliverable to the Commission or to a buyer pursuant to paragraph B.7.

- F. Contractor Appeals. The Contractor shall have the right of appeal, under the clause of this Contract entitled "Disputes," from any determination made by the Construction Manager under subsections C., E., or H. hereof, except that if the Contractor has failed to submit a claim within the time provided for in subsections C. or I. hereof, and has failed to request an extension of such time, the Contractor shall have no such right of appeal. In any case where the Construction Manager has made a determination of the amount due under subsections D., E., or H. hereof, the Commission shall pay to the Contractor the following:
 - 1. If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Construction Manager; or,
 - 2. If an appeal has been taken, the amount finally determined on such appeal.
- G. Deductions from Final Payment. In arriving at the amount due the Contractor under this clause there shall be deducted:
 - 1. The amount of all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of the Contract;
 - 2. The amount of any claim which the Commission may have against the Contractor in connection with the Contract; and
 - 3. The agreed price for, or the proceeds of the sale of, any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Commission.
- H. Partial Termination. If the termination hereunder be partial, the Contractor may file with the Construction Manager a claim for an equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Construction Manager.
- I. Partial Payments. The Commission may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the Contract whenever, in the opinion of the Construction Manager, the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Commission upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which the excess is repaid to the Commission. No interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by

reason of retention or other disposition of termination inventory until ten (10) days after the date of the retention or disposition, or a later date as determined by the Construction Manager by reason of the circumstances.

- J. Records Retention. Unless otherwise provided for in the Contract, or by applicable statute, the Contractor shall, from the effective date of termination until the expiration of three years after final settlement under the Contract, preserve and make available to the Commission at all reasonable times at the office of the Contractor and without direct charge to the Commission, all books, records, documents and other evidence bearing on the costs and expenses of the Contractor under the Contract and relating to the Work terminated hereunder or, to the extent approved by the Construction Manager, photographs, microphotographs or other authentic reproductions thereof.

6.9 Termination For Default – Damages For Delay – Time Extension

- A. Generally. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as shall insure its completion within the time specified in the Contract, or any extension thereof, or fails to complete said Work within that time, the Commission may, by written notice to the Contractor, terminate the Contractor's right to proceed with the Work, or the part of the Work as to which there has been delay. In that event the Commission may take over the Work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the Work the materials, appliances and plant of the Contractor as may be on the site of the Work and necessary therefor. Whether or not the Contractor's right to proceed with the Work is terminated, the Contractor and its sureties shall be liable for any damages to the Commission resulting from any refusal or failure to complete the Work within the specified time.
- B. Liquidated Damages Upon Termination. If fixed and agreed upon liquidated damages are provided for in the Contract and the Commission terminates the Contractor's right to proceed, the resulting damage shall consist of such liquidated damages until such reasonable time as may be required for final completion of the Work, together with any increased costs occasioned by the Commission in completing the Work.
- C. Liquidated Damages Pending Completion. If fixed and agreed upon liquidated damages are provided for in the Contract and the Commission does not terminate the Contractor's right to proceed, the resulting damage shall consist of liquidated damages until the Work is completed.
- D. Circumstances Precluding Termination for Default. The Contractor's right to proceed may not, however, be so terminated, nor the Contractor charged with resulting damages if:
 - 1. The delay in the completion of the Work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to acts of God, acts of the public enemy, acts of the State in its sovereign capacity, acts of the Commission in its contractual capacity, acts of another Contractor in the performance of a contract with the Commission, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe

weather or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of (at any tier) both the Contractor and the subcontractors or suppliers; and,

2. The Contractor, within ten (10) calendar days from the beginning of any such delay (unless the Construction Manager grants a further period of time before the date of final payment under the Contract), notifies the Construction Manager in writing of the causes of the delay. The Construction Manager shall then ascertain the facts and the extent of the actual critical delay, if any, and extend the time for completing the Work when, in the Manager's judgement, the findings of fact justify such an extension. The Manager's findings of fact shall be final and conclusive to the parties, subject only to appeal as provided in the Disputes Clause of the Contract.
- E. Conversion to Termination for Convenience. If, after notice of termination of the Contractor's right to proceed under the provisions of this section, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to General Conditions 6.9, Termination For Convenience.
 - F. Non-Exclusive Remedy. The rights and remedies of the Commission provided for by this clause are in addition to any other rights and remedies provided by law under the Contract.

6.10 Liquidated Damages

- A. Generally. For each day that any work shall remain uncompleted beyond the time(s) specified in the Contract, the Contractor shall be liable for liquidated damages in the amount(s) provided for in the Invitation For Sealed Bids or elsewhere in the Contract Documents; provided, however, that due account shall be taken of any adjustment of the specified completion time(s) for the completion of Work granted under approved change orders.
- B. Methods of Collection. The Commission shall deduct and retain out of the monies due or to become due to the Contractor under the Contract the amount of liquidated damages, and in case the amounts due the Contractor are less than the amount of such damages, the Contractor shall be liable to the Commission for the difference.

6.11 Partial Acceptance

- A. Generally. If, during the performance of the Work, the Commission desires to occupy any portion of the Project, the Commission shall have the right to occupy and use those portions of the Project which, in the opinion of the Construction Manager, can be used for their intended purpose; provided that the conditions of occupancy and use are established and the responsibilities of the Contractor and the Commission for maintenance, heat, light, utilities and insurance are mutually agreed to by the Contractor and the Commission.
- B. Full Completion Required. Partial occupancy shall in no way relieve the Contractor of its responsibilities under the Contract.

6.12 Substantial Completion, Final Inspection and Acceptance

- A. Notice of Substantial Completion. When the Work is substantially complete, the Contractor shall notify the Construction Manager that the Work is ready for inspection and test on a definite date. Sufficient notice shall be given to permit the Construction Manager to schedule the final inspection.
- B. Confirmation of Substantial Completion; Work Remaining. On the basis of the inspection, the Construction Manager shall fix the time from within which the Contractor shall complete any remaining items of Work, which will be indicated on a list prepared by the Construction manager. If the Contractor fails to complete the remaining items so listed in the time stipulated, the Commission shall have the undisputed right to complete that Work and deduct any cost incurred in doing so from any monies retained under the Contract.
- C. Final Payment. Final payment shall not be made until all Contract Work is complete to the satisfaction of the Commission.
- D. Contract Completion. The Contract will be considered to be completed when the Work has been completed in accordance with the terms of the Contract; when final acceptance has occurred; when final payment has been authorized; when all of the obligations of the Contractor and its surety have been complied with; and when final payment has been made.

6.13 Warranty of Construction

- A. Generally. In addition to any other warranties at law or set out elsewhere in this contract, the Contractor warrants, for one year after final acceptance of the Work, that the Work performed under this Contract conforms to the requirements of the Contract and is free from any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of its subcontractors or suppliers at any tier. The Contractor also warrants that all mechanical and electrical equipment, machines, devices, etc. shall be adequate for the use for which they are intended and shall operate with ordinary care and attention in a satisfactory and efficient manner.

Under this warranty the Contractor shall remedy at its own expense any such failure to conform, or any such defect. In addition, the Contractor shall remedy at its own expense any damage to Commission owned or controlled real or personal property when that damage is the result of the Contractor's failure to conform to Contract requirements or any defect of equipment, material, workmanship or design. The Contractor shall also restore any Work damaged in fulfilling the terms of this section. The Contractor's warranty with respect to Work repaired or replaced hereunder will run for one year from the date of the acceptance by the Commission of the repair or replacement.

- B. Notice of Defect or Damage. The Commission will notify the Contractor in writing within a reasonable time after the discovery of any failure, defect or damage.

- C. Commission Right to Repair. Should the Contractor fail to remedy any failure, defect or damage described in subsection A. above within five (5) calendar days after receipt of notice thereof, the Commission shall have the right to replace, repair or otherwise remedy such failure, defect or damage at the Contractor's expense.
- D. Third-Party Warranties. In addition to the other rights and remedies provided by this section, all subcontractors', manufacturers' and suppliers' warranties, express or implied, respecting any Work and materials, at the direction of the Commission, shall be enforced by the Contractor for the benefit of the Commission. In such case, if the Contractor's warranty under subsection A. above has expired, any suit by the Commission to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the Commission. The Contractor shall obtain and provide to the Commission copies of all warranties which the subcontractors, manufacturers or suppliers would give in normal commercial practice.
- E. Written Warranties. If directed by the Construction Manager, the Contractor shall require such warranties to be executed in writing to the Commission.
- F. Exclusions from Warranties. Notwithstanding any other provision of this section, unless such a defect is caused by the negligence of the Contractor or its subcontractors or suppliers at any tier, the Contractor shall neither be liable for any defects of material or design furnished by the Commission nor for the repair of any damage which results from any such defect in Commission furnished material or design.

7. PAYMENT

7.1 Scope of Payment

- A. Generally. Payments will be made, in accordance with the other provisions of this article, upon the basis of the value of the Work performed, including materials incorporated into that Work, or for the actual quantities of unit priced contract items performed; provided that such are in accordance with the Plans and Specifications. However, no payment made, except for final payment, shall in any way affect the obligations of the Contractor to perform all Work in strict accordance with the Contract Documents and to repair or replace any defective work and bear all responsibility for any damages arising as a result of such defects in its performance. When requested in writing by the Contractor, and approved in the sole discretion of the Construction Manager, payment may also be made for nonperishable materials to be incorporated into the Work which are delivered to and stockpiled or stored at the work site or other approved location. However, no material for which said payment is made, in whole or in part, shall thereby be deemed to have been accepted by the Commission, and both title to and responsibility for such materials shall be deemed to remain with the Contractor until such are actually incorporated into the Work; provided that materials for which any such payment has been made by the Commission shall not be removed from the site or from storage at other locations until ready for use in performing the Work.

- B. Schedule of Values. Prior to making application for any payment under the Contract, the Contractor shall submit to the Commission a Schedule of Values of the various parts of the Work, including quantities, aggregating the total sum of the Contract. The Schedule shall be so divided as to facilitate payments to subcontractors. The form of this submission shall be as the Contractor and the Construction Manager have agreed upon and shall be supported by such evidence as to its correctness as the Construction Manager may direct. The Schedule shall be used as a basis for certificates of payment, unless at a later date found to be in error.
- C. Application for Payment Schedule. Application for payment shall be submitted on or about the 25th day of each month, but not less than thirty (30) days after the Contractor actually commences Work at the site nor before completing ten (10) days of such performance.
- D. Itemized Application for Payment. In applying for payment the Contractor shall submit a statement, itemized in such form and supported by such evidence as the Construction Manager may require, showing the Contractor's right to the payment claimed. Each invoice shall prominently display the Contractor's Federal Employer Tax Identification Number, or if the Contractor has no such number then the Contractor's social security number.
 - 1. With each payment application, the Contractor, when signing the payment form, certifies that he has made all prior payments and that he will make timely payments from the proceeds of progress payments and final payments then due him, to his sub- contractors and suppliers in accordance with his contractual arrangement with them.
 - 2. In applying for all payments, excluding the first payment and final payment, the Contractor shall submit, in addition to the above, a certificate that it has paid:
 - a. All labor to date.
 - b. All vendors and material suppliers, in full, for all items received.
 - c. All subcontractors, in full, less the retained amount.
 - 3. In applying for final payment, the Contractor shall submit, in addition to the statement required in the first sentence of subsection D, above, the following:
 - a. In all cases as the Commission may demand, such evidence as will establish the Commission's title to materials and reasonable assurances that causes for liens by labor and others do not exist.
 - b. An electrical certificate from an independent (non-governmental) electrical inspection agency approved by the County Fire Marshall. The Contractor must make application for the inspection, coordinate same and pay the required inspection fees. The independent electrical inspection agencies are not considered local authorities.
 - c. All other guarantees as called for by the Contract.
 - d. All required equipment manuals and parts lists.

7.2 Force Account Work

- A. Generally. When the Contractor is required to perform Work as a result of additions or changes to the Contract for which there are no applicable unit

prices in the Contract, the Commission and the Contractor shall make every effort to come to an agreed upon price for the performance of such Work. If an agreement cannot be reached, the Commission may require the Contractor to do such Work on a force account basis, for which the Contractor will be compensated in accordance with the following:

1. Labor. For all labor, and for foreman in direct charge of the specific operations, the Contractor shall receive the actual wages for each and every hour the labor and foremen are actually engaged in such work.
2. Materials. For materials accepted by the Construction Manager and used, the Contractor shall receive the actual cost of such materials delivered to the site of the Work, including transportation paid by him (exclusive of machinery rentals as hereinafter set forth).
3. Equipment. For any machinery or special equipment (other than small tools, whether rented or owned), the use of which has been authorized by the Construction Manager, the Contractor shall receive the rates agreed upon in writing before such Work is begun, or the Contractor shall receive those rates which may be specified in Section 2.9.B.12 of the Contract. For purposes of definition, equipment with a new cost of \$500 or less will be considered small tools.
4. Materials and Supplies Not Incorporated into the Work. For materials and supplies expended in the performance of the Work (excluding those required for rented equipment) and approved by the Construction Manager, the Contractor shall receive the actual cost of such materials and supplies used.
5. Subcontractors. For Work done solely by a subcontractor, the subcontractor's cost shall be determined as stipulated in paragraphs, A.1 through 4, above. The allowable percentages for combined overhead and profit for the subcontractor shall be as stipulated hereinafter under paragraph A.7, below. The Contractor shall be entitled to a total allowance of eight percent (8%) of the subcontractor's total cost of doing the Work.
6. Superintendence. No additional allowance shall be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.
7. Contractor's Overhead and Profit. The Construction Manager and the Contractor shall negotiate a combined percentage fee for overhead and profit on force account Work performed pursuant to this section by the Contractor's forces and its subcontractors. However, in the event that the Construction Manager and the Contractor are unable to agree upon such a combined percentage, the Contractor will be paid that fee in accordance with the following:

Value of Work	Combined Overhead and Profit
\$0 - \$1,000	20%

\$1,001 - \$10,000	17%
\$10,001 - \$25,000	15%
Over \$25,000	Negotiated but not more than 15%

The Contractor's combined percentage fee for overhead and profit, whether negotiated or determined in accordance with the value of Work set forth above, shall include:

- a. Compensation for all costs paid to, or on behalf of, workmen by reason of subsistence and travel allowances, health and welfare benefits, pension fund benefits or other benefits that may be required by collective bargaining agreements or other employment contracts generally applicable to the classes of labor employed in the Work.
 - b. Bond premiums, property damage, liability and workmen's compensation insurance premiums, unemployment insurance contributions and Social Security taxes on the force account work.
- B. Compensation. The compensation set forth above shall be received by the Contractor as payment in full for Work done on a force account basis. At the end of each day the Contractor's representative and the Construction Manager shall compare records of the cost of Work ordered on a force account basis.
- C. Statements. No payment will be made for Work performed on a force account basis until the Contractor furnishes the Construction Manager duplicate itemized statements of the cost of such force account Work, detailed as to the following:
1. Name, classification, date, daily hours, total hours, rate and extension for laborers and foremen.
 2. Designation, dates, daily hours, total hours, rental rate and extension for each unit of machinery and equipment.
 3. Quantities of materials, prices and extensions.
 4. Transportation of materials.
 5. Payments of items under paragraphs 3 and 4 above shall be accompanied by original receipted invoices for materials used and transportation charges. If, however, the materials used in the force account Work are not specifically purchased for such Work, but are taken from the Contractor's stock, then in lieu of the original invoices the statements shall contain or be accompanied by an affidavit of the Contractor which shall certify that such materials were taken from the Contractor's stock, that the quantity claimed was actually used and that the price and transportation of the material as claimed represent actual cost.

7.3 Progress Payments

A. Current Estimates

1. Lump Sum Contracts. If requested by the Commission, the Contractor shall furnish an acceptable breakdown of the lump sum Contract Price showing the amount included therein for each principal category of the Work. Said breakdown shall be in such detail so as to provide a basis for estimating monthly progress payments.
2. Monthly Estimates. Each month the Commission will pay the Contractor for the contract value of the Work satisfactorily performed during the preceding calendar month including authorized extras and additions, less ten percent (10%) for retainage (provided Contractor has not furnished a 100% payment security and 100% performance security) and less any payments withheld under Section 7.7. For contracts where the contractor has furnished a 100% payment security and 100% performance security, the Commission will retain five percent (5%), in accordance with The Annotated Code of Maryland, Finance and Procurement Regulations, Title 17, Section 17-110. Upon completion of the items on the project close-out punch list, the Commission will release 50 percent of the project's total retainage, subject to any payments withheld under Section 7.7. The remaining 50 percent will be released in accordance with paragraph 7.8. Current estimates will be based upon the Construction Manager's estimate of the quantity of Work (including materials and/or equipment complete in place) satisfactorily performed. In the instance of lump sum items, the Construction Manager's estimate shall be the proper fraction of the lump sum items satisfactorily performed during the preceding month. All quantities, estimates and fractions will be reasonably accurate approximations and are subject to correction (a) in subsequent current estimates, (b) in any semi-final estimate and, (c) in final payment.

Any and/or all partial payments may be withheld in the event any requirement of the Contract Documents has not been complied with by the Contractor. Should either the Construction Manager or the Contractor be of the opinion that any estimates, quantities and/or fractions (either as to an individual current estimate or accumulations thereof) do not represent a reasonably accurate approximation of the value of the actual Work then performed and completed, the details questioned shall be reviewed and any corrections adjusted for in the next current estimate.

7.4 Certificate of Payment

- A. Payment Due. If the Contractor has made application, as above, the Commission shall, not later than the date when such payment falls due, issue to the Contractor payment for such amount as it decides to be properly due. In approving such partial payments, there shall be retained the percentage of the estimated amount due in accordance with Section 7.3.A.2. of the General Conditions and The Annotated Code of Maryland, Finance and Procurement Regulations, Title 17, Section 17-110, until completion of all Work covered by the Contract.

- B. Payment Does Not Constitute Acceptance of Work. No certification issued nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the Commission, shall be an acceptance of any Work or materials not in accordance with the Contract Documents.

7.5 Correction of Work Before Final Payment

- A. Removal of Non-Conforming Materials. The Contractor shall promptly remove from the premises all materials condemned by the Construction Manager as failing to conform to the Contract Documents, whether incorporated in the Work or not. The Contractor shall promptly replace and re-execute its own Work in accordance with the Contract Documents, and without expense to the Commission, and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.
- B. Commission's Right to Remove Non-Conforming Materials. If the Contractor does not remove such condemned Work and materials within the time scheduled by the Construction Manager, fixed by written notice, the Commission may remove them and may store the materials at the expense of the Contractor. If the Contractor does not pay the expense of such removal within ten (10) days' time thereafter, the Commission may, upon ten (10) days' notice, sell such materials and shall account for the net proceeds thereof, after deducting all costs and expenses that should have been borne by the Contractor.

7.6 Deductions For Uncorrected Work

If the Commission deems it inexpedient to correct Work damaged or done not in accordance with the Contract Documents, an equitable deduction from the Contract Price shall be made therefore.

7.7 Payments Withheld

- A. Generally. The Commission may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect the Commission from loss on account of:
 1. Defective Work not remedied.
 2. Claims filed or reasonable evidence indicating the probable filing of claims.
 3. Failure of the Contractor to make payments properly to subcontractors for material or labor.
 4. A reasonable doubt that the Contract can be completed for the balance then unpaid.
 5. Damage to another contractor.
 6. Work billed that was not completed as of the invoice date.
- B. Payments Due Upon Compliance. When the above grounds are removed, payment shall be made for amounts withheld because of them.

7.8 Acceptance And Final Payment

- A. Generally. When the Contractor has completed the Work and supplied the Commission with as-built drawings of the project, and it has been finally accepted, the Commission will promptly proceed to:

1. Complete any necessary computation of quantities.
 2. Submit to the Contractor, within sixty (60) days after final completion and acceptance of the Work by the Construction Manager, a tabulation of the proposed final quantities. This tabulation shall be accompanied by a statement setting forth: (a) any additional Work performed under change orders and/or supplemental agreements; (b) any authorized extension of time; (c) the number of any days of inexcusable delay which have been charged against the Contractor for having failed to timely complete the Contract, and (d) any deductions, charges or liquidated damages which have been made or imposed. Payment of the full apparent values of the Contract, thus determined, shall become due and payable to the Contractor ninety (90) days after final acceptance of the Work by the Construction Manager, as hereinafter provided. As a condition precedent to the Contractor's right to receive final payment, the Contractor shall be required to execute a general release of all claims against the Commission arising out of or in any way connected with the performance of the Contract.
- B. Contractor's Right to Accept or Protest Final Payment. The Contractor shall have a period of ten (10) calendar days from the date upon which it receives the aforementioned tabulation from the Commission, within which to:
1. Decide whether or not to accept final payment upon such a basis.
 2. Notify the Commission, in writing, of its decision. The Contractor may request an additional period of up to ten (10) calendar days in which to notify the Commission of its decision. In the event the Contractor notifies the Commission that it protests final payment on such a basis, that notification shall outline the reason(s) for said protest.
- C. Contractor Acceptance. Upon receipt of a notification of acceptance as provided for in subsection B. above, the Commission shall prepare the final estimate and final payment forms and submit them to the Contractor. These forms shall show all data noted in subsection A. above, together with deductions for all prior payments. The Contractor shall execute these forms and return them to the Commission within thirty (30) calendar days from the date they are received. If such signed forms are not received by the Commission within the specified time, the Commission will prepare duplicate forms for execution and payment. Such action by the Commission shall be deemed to constitute acceptance and final payment.
- D. Partial Payment if Contractor Protests. If, under the provisions of subsection B. above, the Contractor notifies the Commission of its protest and nonacceptance of the data submitted to him, the Commission shall pay the Contractor a semi-final estimate, or an additional semi-final estimate in the event a semi-final estimate has already been paid upon the data noted in subsection A. above, with deductions for all prior payments. A retainage equal to not more than five percent (5%) of the total value of the Contract shall be withheld by the Commission. The acceptance of such semi-final estimate, or additional semi-final estimate, shall not be considered as a waiver on the part of the Contractor of its right to pursue a protest and an adjusted final payment.

- E. Negotiation of Protest and/or Outstanding Claim. In the event the Contractor does not accept the data submitted to him as described in subsection A. above, and/or has outstanding a claim failed in accordance with General Condition 3.15, the Construction Manager and the Contractor shall confer at mutually convenient times and endeavor to reconcile all points of disagreement expeditiously. If such reconciliation is accomplished, the Commission will promptly proceed with acceptance and final payment on the reconciled basis and in accordance with the provisions of subsection C. above. If reconciliation is not accomplished within thirty (30) days, the decision of the Construction Manager shall be reviewed by the Commission and appropriate legal counsel. After review and confirmation by the Commission, the decision of the Construction Manager is deemed to be a final decision. The Construction Manager shall furnish a copy of the final decision to the Contractor by certified mail, return receipt requested. This decision may be appealed by the Contractor as provided for in General Condition 3.15. Failure to provide timely notification of appeal to the Construction Manager shall constitute a waiver by the Contractor of its rights under the Disputes Clause and final payment may then be made by the Commission based on the Construction Manager's recommendation.
- F. Reimbursement for Overpayment. All prior partial estimates and payments shall be subject to correction at the time of acceptance and final payment, and if the Contractor has been previously overpaid the amount of such overpayment shall be set forth in the finally payment forms and the Contractor hereby agrees that he will reimburse the Commission for such overpayment within ninety (90) days of receipt of such advice, and its surety will not be granted release from obligations under the terms of the Contract until reimbursement has been made in full.

7.9 Late Payment

- A. Invoicing. A proper invoice shall include: (1) a description of the items or services provided; (2) the date the goods were received or the inclusive dates the services were rendered; (3) the contract price agreed upon pursuant to the Contract; (4) retention, if any; (5) the basis for the billing; (6) the Contract or Purchase Order Number; (7) the Contractor's Federal Tax Identification Number or Social Security Number; and (8) the name and address of the proper invoice recipient.
- B. Grounds for Non-Payment. For purposes of the Contract, an amount will not be deemed due and payable if:
 - 1. The amount invoiced is inconsistent with the Contract.
 - 2. The proper invoice has not been received by the person or office specified in the Contract.
 - 3. The invoice or performance under the Contract is in dispute, or the Contractor has failed to otherwise comply with the provisions of the Contract.
 - 4. The item or services have not been accepted.
 - 5. The quantity of items delivered is less than the quantity invoiced.
 - 6. The items or services do not meet the quality requirements of the Contract.

7. The Contractor did not meet the inspector on-site prior to submission of the bill to verify quantities.
 8. The Contract provides for progress payments and the proper invoice for the progress payment has not been submitted.
 9. The Contract provides for withholding retainage and the invoice is for the retainage, or all stipulated conditions for release of the retainage have not been met.
 10. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Construction Manager or by the Contract concerning performance under the Contract and compliance with its provisions. Payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the Commission's approval of a proper invoice from the Contractor. The Commission's failure to remit timely payment may entitle the Contractor to interest as proscribed by Maryland Law.
- C. Late Payments. Payments to the Contractor pursuant to this Contract shall be made no later than thirty (30) days after the Commission's approval of a proper invoice from the Contractor. The Commission's failure to remit payment within this period may entitle the Contractor to interest as proscribed by Maryland law.

7.10 Audit

- A. Contractor's Consent to Audit. The Contractor agrees that the Commission or its duly authorized representative shall, until the expiration of three (3) years after final payment under the Contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contract involving transactions related to the Contract.
- B. Subcontracts to Include Audit Consent Provision. The Contractor, further, agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that the Commission or its duly authorized representative shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers and records of such subcontractor, involving transactions related to the subcontract.