

COMPREHENSIVE AGREEMENT
BETWEEN THE CITY OF VIRGINIA BEACH
AND
ARMADA HOFFLER CONSTRUCTION COMPANY of
VIRGINIA
FOR THE
DESIGN, CONSTRUCTION, AND OUTFITTING
OF THE
ADOPTION-FRIENDLY ANIMAL SHELTER

Articles 2, and 4 through 7 of this Agreement Were Prepared by
ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

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THE CITY OF VIRGINIA BEACH DOES NOT DISCRIMINATE AGAINST FAITH-BASED ORGANIZATIONS

THIS AGREEMENT (the "Agreement") made this 1st day of July 2010, by and between THE CITY OF VIRGINIA BEACH, a municipal corporation of the Commonwealth of Virginia ("Owner") and , ("Contractor") with a principal place of business is located at

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – SCOPE OF WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents.

ARTICLE 2 – THE PROJECT

The Project for which the Work under the Contract Documents is generally described as follows: To replace the existing Animal Control Facility on Leroy Drive with a new Adoption Friendly Animal Shelter facility at a new site on Birdneck Road to meet the needs of the City; promote and increase adoption rates; reduce, control, and manage disease; meet the expectations of the citizens; and expansion of services in a modern, energy efficient, and architecturally pleasing institutional quality building. The work will include spaces for the Animal Control Officers, a detached and separate large-animal barn, and all associated site work. These new facilities will be delivered via a comprehensive agreement based on the design-build, best value, delivery method to include, but not limited to, all architecture, engineering, construction services, and all furniture & equipment for an all-inclusive outfitting to provide a complete, usable, and fully operational (turnkey) facility, less the Owner provided items, i.e. phones and computers.

ARTICLE 3 - CONTRACT TIMES

3.01. Time of the Essence

All time limits for Milestones, if any, Substantial Completion, and Final Acceptance as stated in the Contract Documents are of the essence of the Agreement.

3.02. Dates for Substantial Completion and Final Acceptance

The Work for the Project will be substantially completed no later than 510 calendar days after the Notice to Proceed date and ready for Final Acceptance in accordance with paragraph 13.08 of the General Conditions on or before 540 calendar days after the Notice to Proceed date. (Note: The contractor will make final application of the LEED documentation to the Green Building Certification Institute (GBCI) before Final Acceptance; however application review and certification by the GBCI are expected to occur beyond Final Acceptance.)

3.03. Liquidated Damages

A. Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.02 above, plus any extensions thereof allowed in accordance with paragraph 11.02 of the General Conditions. The parties agree that the Owner will be substantially damaged in amounts that will be difficult or impossible to determine if Substantial Completion or Final Acceptance is not achieved by the Contractor on or before the Contract Substantial Completion Date and/or Contract Final Acceptance Date set forth herein. The parties therefore agree that if Substantial Completion does not occur by the Contract Substantial Completion Date for any reason not the fault of the Owner or otherwise constituting an excusable delay, the Owner shall be entitled to liquidated damages in the amount of \$ 1,000 per calendar day for each day the Substantial Completion of the project, or any phase thereof, is delayed beyond the Contract Substantial Completion Date in lieu of actual damages for such delays. The parties further agree that if Final Acceptance does not occur by the Contract Final Completion Date for any reason not the fault of the Owner or otherwise constituting an excusable delay, the Owner shall be entitled to liquidated damages in the amount of \$ 250 per calendar day for each day the Final Acceptance of the project, or any phase thereof, is delayed beyond the Contract Final Completion Date in lieu of actual damages for such delays. Liquidated damages for Substantial Completion and Final Acceptance are not cumulative. Contractor hereby waives any defense as to the validity of any such liquidated damages set forth herein on the grounds that such liquidated damages are void as penalties and/or are not reasonably related to the amount of actual damages.

ARTICLE 4 - CONTRACT PRICE

4.01. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.01.A below:

A. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds as the Contract Price stated in Exhibit B.

B. As shown on the Cost Proposal Form in Exhibit B, the Contractor's total contract amount includes a 5% Owner's contingency. This Owner's Contingency is for the sole use by the Owner, at the Owner's discretion, for any contract modifications approved by the Owner to the scope of the Project.

4.02. The hourly rate for employees performing additional Design Professional Services not included in the Contract Price in accordance with this Agreement shall be as stated in Exhibit C.

ARTICLE 5 - PAYMENT PROCEDURES

5.01. Contractor shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. Progress Payments: Retainage. Owner shall retain 5% of all progress payments until Final Acceptance. Owner shall reduce or adjust progress payments to keep the total amount commensurate with the actual percentage of work satisfactorily completed. No payment will be made for non-conforming Work.

B. Final Payment. Upon final acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 6 - INTEREST

6.01. All moneys not paid when due as provided in Article 13 of the General Conditions shall bear interest at the rate of five (5%) percent per annum.

ARTICLE 7 - Contractor's REPRESENTATIONS

7.01. To induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents (including the Exhibits) listed in paragraphs 8.01. A through B and the other related data identified in the Request for Proposals.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all reports of explorations and tests of subsurface conditions (if any) at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified or made available by Owner.
- E. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- F. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- G. Contractor has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Contractor.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01 The Contract Documents consist of the following:

- A. This Agreement (pages 1 to 9, inclusive); with the Exhibits "A" thru "T":

Exhibit A - Standard General Conditions of the Comprehensive Agreement Between Owner and Contractor

Exhibit B - Revised Contract Cost Proposal Form dated May 24, 2010 (page 1 of 2) with the Revisions to the Scope of Work dated June 4, 2010 (page 2 of 2).

Exhibit C - Professional Fees

Exhibit D - Subcontractor's Data Sheet

Exhibit E - Woman and Minority Participation Plan

Exhibit F - Certificate of Insurance

Exhibit G - Contract Payment Bond

Exhibit H - Contract Performance Bond

Exhibit I - Contractor Evaluation Form

B. The following documents are hereby included by reference to this Agreement and are not attached herein. In the event that a conflict exists between this Agreement and any of the documents referenced herein, the Agreement shall control.

The City of Virginia Beach Request for Proposal (RFP) dated October 23, 2009, Addendum No.1 to that RFP dated November 12, 2009, Armada-Hoffler Response to that RFP dated December 22, 2009 with Part 1 of 2, Public Information and Part 2 of 2, Proprietary Information and, the Responses to Additional Questions From the City of Virginia Beach Regarding the Virginia Beach Adoption-Friendly Animal Care & Control Facility dated January 18, 2010.

C. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto but upon acceptance by both parties are incorporated herein:

1. Notice to Proceed;
2. All Change Orders amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;
3. Specifications as defined in Paragraph 1.01.A.42 of the General Conditions;
4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions; and
5. The approved construction schedule.

8.02. There are no Contract Documents other than those listed above in this Article 8.

8.03. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01. The Standard General Conditions of the Comprehensive Agreement Between Owner and Contractor are referred to herein as the General Conditions.

9.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.03. The Contractor shall not assign its rights and duties under the contract documents without the prior written consent of the Owner. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.04. Owner and Contractor each binds itself, its successors, assigns, officials and representatives to the other party hereto, its successors, assigns, officials and representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.05. Any provision or part of the Contract Documents held to be void or unenforceable under the laws of the Commonwealth of Virginia shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon Owner and Contractor.

9.06. Contractor warrants that it did not either directly or indirectly enter into any combination or arrangement with any person, firm, or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman Act (15 U.S.C. § 1) or Sections 59.1-9.1 through 59.1-9.17 or Sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia (1950), as amended.

Contractor hereby certifies that this Agreement or any claims resulting there from is not the result of or affected by any act of collusion with or any act of another person or persons, firm or corporation engaged in the same line of business or commerce.

Contractor hereby further certifies that it has not knowingly falsified, concealed, misled, or covered up by any trick, scheme, or device a material fact in connection with the Project.

Contractor further agrees that neither it nor any partnership, association or corporation in which its officers, directors or shareholders shall have a pecuniary interest will sell or furnish any building materials, supplies or equipment for any building or structure designed and constructed pursuant to this Agreement.

Contractor further agrees to require all subcontractors, consultants, subconsultants, or any other persons, corporations, or legal entities providing or furnishing labor, material, equipment, or professional services related to this Agreement valued in excess of \$10,000 to execute an anti-collusion statement as a condition of contract.

9.07 Neither Contractor, nor any subcontractor shall demand or receive from any of its suppliers or its subcontractors, consultants or subconsultants, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this paragraph. No person shall demand or receive any payment, loan, subscription, an advance deposit of money, services or anything of value in return for an agreement not to complete a contract. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this paragraph 9.07, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by Owner and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

9.08. Neither Contractor nor any subcontractor shall confer upon Owner's employee having official responsibility for this Agreement any payment, loan, subscription, advance deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal value is exchanged.

9.09. During the performance of this Agreement, Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification/consideration reasonably necessary to the normal operation of Contractor.

Contractor agrees to post in conspicuous places, available to employees and applicant for employment, notices setting forth the provisions of this nondiscrimination clause.

Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.

Notices and advertisements placed in accordance with federal law, rules or regulations shall be deemed sufficient for purposes of meeting the requirements of this paragraph.

Contractor will include the provisions of this paragraph 9.09 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

9.10. During the performance of this Agreement, Contractor agrees as follows:

Contractor will provide a drug-free workplace for Contractor's employees.

Contractor will post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace.

Contractor will include the provisions of this paragraph 9.10 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

9.11. As required under Chapter 11, Title 54.1 of the Code of Virginia (1950), as amended, Contractor shall provide Owner evidence of certification or licensing by the Virginia State Board of Contractors before Contractor can perform any Work under this Agreement. The license shall indicate that Contractor is licensed with the Virginia State Board of Contractors to perform the Work under this Agreement. Chapter 5., Title 59.1 of the Code of Virginia (1950), as amended, requires anyone transacting business in the Commonwealth of Virginia under an assumed or fictitious name to file a Certificate of Ownership with the Clerk's Office of the Virginia Beach Circuit Court. Limited partnerships, limited liability companies or corporations transacting business in the Commonwealth of Virginia under an assumed or fictitious name are required to also file a Certificate of Ownership with the Clerk of the State Corporation Commission. Contractor shall not disclose or permit the disclosure of any confidential information as identified by Owner except to its agents, employees and other consultants or subcontractors who need such information in order to properly perform their duties relative to this Agreement.

9.12. All notices required by this Agreement or the Contract Documents or other communication to either party by the other shall be made and in writing in accordance with paragraph 15.01 of the General Conditions and shall be addressed as follows:

To Owner:

Mr. Richard Martinec, P.E.
Facilities Design and Construction Division
Public Works/Engineering
City of Virginia Beach
2405 Courthouse Drive, Building 2, Room 345
Virginia Beach, Virginia 23456

To Contractor:

Ray Considine, Project Executive
Armada Hoffler Construction Company of Virginia
4549 Commerce St. Suite 100
Virginia Beach, VA 23462

9.13. This Agreement shall be deemed to be a Virginia contract and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this Agreement shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

9.14. Any and all suits for any claims or for any and every breach or dispute arising out of this Agreement shall be maintained in the appropriate court of competent jurisdiction in the City of Virginia Beach.

9.15. This Agreement together with the Contract Documents, represent the entire and integrated agreement between Owner and Contractor and supersedes all prior negotiations, representations, or agreements either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor. Nothing contained in this Agreement is intended to benefit any third party. No provision of this Agreement or the Contract Documents shall constitute or be deemed to be a waiver of the sovereign immunity of Owner.

9.16 SUBMISSION AND DISPOSITION OF CLAIMS

Prompt knowledge by the Owner of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of the Owner and/or result in mitigation or elimination of the effects of the claim. Therefore, a written statement providing the Owner with notice of the Contractor intention to file a claim which (i) describes the act or omission by the Owner or its agents that the Contractor contends caused it damages or entitles it to other relief; and (ii) provides a description of the nature and amount of the claim. Such written statement shall be submitted to the Owner within 10 calendar days of the time of the occurrence or event giving rise to the Claim or beginning of the work upon which the Claim is based; provided, however, if such damage is deemed certain in the opinion of the Contractor to result from its acting on an order from the Owner, it shall immediately take written exception to the order. For purposes of this provision, "Claim" shall include, without limitation, any request for an increase in the contract price or time and any request for equitable adjustment. Submission of a notice of claim as specified shall be mandatory, and failure to submit such notice shall be a conclusive waiver to such claim for

damages or other relief by the Contractor. Neither an oral notice or statement, nor an untimely notice or statement will be sufficient to satisfy the requirements herein.

The Contractor shall submit substantiating documentation within 30 calendar days after delivery of written notice of intent to file a Claim.

The Owner will review the claim and render a final decision in writing within 30 days of receipt of Contractor's delivery of the substantiating documentation or of a written request for a final decision, whichever is later. Such decision shall be final and binding to the fullest extent allowed by law.

9.17 LAWS TO BE OBSERVED

The Contractor shall keep fully informed of federal, state, and local laws, bylaws, ordinances, orders, decrees, and regulations of governing bodies, courts, and agencies having any jurisdiction or authority that affects those engaged or employed on the work, the conduct of the work, or the execution of any documents in connection with the work. The Contractor shall observe and comply with such laws, ordinances, regulations, orders, or decrees and shall indemnify and hold harmless the Owner and its agents, officers, or employees against any claim for liability arising from or based on their violation, whether by himself, his agents, his employees, or sub-consultants, sub-Contractors, and other suppliers and vendors. If the Contractor observes that the contract documents are at variance therewith, he shall promptly notify the Owner in writing. The Contractor shall execute and file the documents, statements, and affidavits required under any applicable federal or state law or regulation affecting his bid or Contract or prosecution of the work thereunder. The Contractor shall permit examination of any records made subject to such examination by any federal or state law or by regulations promulgated thereunder by any state or federal agency charged with enforcement of such law.

Contractor does not currently, and shall not during the performance of this contract; knowingly employ an unauthorized alien, as defined in the federal Immigration Reform and Control Act of 1986. See Section 2.2-4311.1 of Code of Virginia.

In accordance with Title 2.2, Subtitle II, Part B, Chapter 43, Article 4, of the Code of Virginia (Virginia Public Procurement Act), the Contractor shall make payment to all sub-consultants, sub-Contractors, and other suppliers and vendors, as defined in the Code, within 7 days after receipt of payment from the Owner; or, shall notify the Owner and sub-consultants, sub-Contractors, and other suppliers and vendors in writing of the intention to withhold all or part of the amount due along with the reason for nonpayment. In the event payment is not made as noted, the Contractor shall pay interest at the rate of 1 percent per month, unless otherwise provided in the contract, to the sub-consultants, sub-Contractors, and other suppliers and vendors on all amounts that remain unpaid after 7 days except for the amount withheld as provided herein.

The same requirements shall be included in each subcontract and shall be applicable to each lower-tier sub-consultants, sub-Contractors, and other suppliers and vendors. The Contractor shall provide Owner with its social security number or federal taxpayer identification number prior to any payments under this Contract.

The Contractor's obligation to pay an interest charge to a sub-consultants, sub-Contractors, and other suppliers and vendors pursuant to the payment clause in this section may not be construed to be an obligation of the Owner. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

The Contractor is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law. Additionally, the Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or canceled at any time during the term of the contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed, initialed or identified by Owner and Contractor.

In witness whereof, the Contractor has caused this Contract to be executed in its corporate name and on its behalf by its President and its Seal hereunto affixed and with due authority by its Board of Directors.

ARMADA HOFFLER CONSTRUCTION COMPANY of VIRGINIA

BY: John C. Davis
VICE PRESIDENT JOHN C. DAVIS

Virginia Code 47.1-14
He/She/They is/are personally known to me or has/ have produced _____ as identification.

STATE OF Virginia
CITY/COUNTY OF Virginia Beach, to-wit:

The foregoing Contract was acknowledged before me this 12 day of July, 2010, by John C. Davis (Name), President, respectively of Armada Hoffler Construction Co. of VA (Name), a Virginia corporation, on behalf of the corporation.

[AFFIX NOTARY SEAL] Heather H. Versic
NOTARY PUBLIC



Notary Registration Number: 7272470
My Commission Expires: 10/31/13

CITY OF VIRGINIA BEACH

BY: _____
Bill S. Davis, CPPO
Purchasing Agent

Virginia Code 47.1-14
He/She/They is/are personally known to me or has/ have produced _____ as identification.

STATE OF _____
CITY/COUNTY OF _____, to-wit:

The foregoing Contract was acknowledged before me this ___ day of _____, 200___, by _____ (Name), President, respectively of _____ (Name), a _____ corporation, on behalf of the corporation.

[AFFIX NOTARY SEAL] _____
NOTARY PUBLIC

Notary Registration Number: _____
My Commission Expires: _____

APPROVED AS TO CONTENTS
Ernesto Hernandez
SIGNATURE

PUBLIC WORKS/ENGINEERING
DEPARTMENT

Exhibit "A"

STANDARD GENERAL CONDITIONS OF THE
COMPREHENSIVE AGREEMENT BETWEEN
OWNER AND CONTRACTOR

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Acceptance* - The formal written acceptance of the Work by Owner.
2. *Addenda* - Written or graphic instruments issued prior to the opening of Proposals that clarify, correct or change the Request for Proposals or the Contract Documents.
3. *Agreement* - The Comprehensive Agreement between Owner and Contractor covering the Work and all Contract Documents.
4. *Allowance* - An amount established in the Contract Documents for inclusion in the Contract Price to cover the cost of prescribed items not specified in detail.
5. *Application for Payment* - The form which is to be used by Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
6. *Architect of Record* - Professional legally responsible for the professional care of all design documents and Drawings.
7. *Bonds* - Performance and payment bonds and other instruments of security.
8. *Change Notice* - A notice issued to the Contractor specifying a proposed change to the Contract Documents.
9. *Change Order* - A written order, which is signed by Contractor and Owner, which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
10. *Claim* - A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.
11. *Conceptual Documents* - The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.
12. *Construction* - The result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.
13. *Construction Sub-agreement* - A written agreement between Contractor and a construction Subcontractor for provision of Construction.
14. *Contract Documents* - Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

15. *Contract Price* – The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents.
16. *Contract Times* – The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment in accordance with paragraph 13.08.
17. *Design Professional Services* – Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases.
18. *Drawings* – Those portions of the Contract Documents prepared by or for Contractor and approved by Owner consisting of drawings, diagrams, illustrations, schedules and other data that show the scope, extent, and character of the Work.
19. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
20. *Extra Work* – Work determined by Owner as not being covered by the Contract Documents.
21. *Field Order* – A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
22. *Final Acceptance* – “Final Acceptance” of the Work occurs when the Project is fully completed in full, absolute, and strict compliance with the Contracts Documents including completion of all punch list items, and Owner gives Contractor written acceptance thereof.
23. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.
24. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
25. *Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
26. *Liens* – Charges, security interests or encumbrances upon real property or personal property.
27. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
28. *Notice of Award* – The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Agreement.
29. *Notice to Proceed* – A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *Contractor* – The individual or entity with whom Owner has entered into the Agreement as defined in Va. Code § 56-575.1 and shall include design construction, improving, equipping and installation.
31. *Owner* – The “Owner” is the City of Virginia Beach, the entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed, and is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term “Owner” also means the authorized representative of Owner.

32. *Partial Utilization* – Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
33. *PCBs* – Polychlorinated biphenyls.
34. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
35. *Project* – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
36. *Proposal* – The documents submitted by Contractor in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.
37. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
38. *Request for Proposals* – The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.
39. *Resident Project Representative* – The authorized representative of Owner who may be assigned to the Site or any part thereof.
40. *Schedule of Values* – A schedule prepared by Contractor and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work, aggregating the total original Contract Price.
41. *Site* – Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner that are designated for use of Contractor.
42. *Specifications* – The part of the Contract Documents prepared by or for Contractor and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
43. *Subcontractor* – An individual or entity other than a Supplier having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
44. *Sub-agreement* – A written agreement between Contractor and a design professional for provision of Design Professional Services.
45. *Submittal* – A written or graphic document prepared by or for Contractor which is required by the Contract Documents to be submitted to Owner by Contractor. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, Schedules of Values, manufacturer's literature, catalog cuts, etc. Submittals other than Drawings and Specifications are not Contract Documents.
46. *Substantial Completion* – The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) can be fully utilized for the purposes for which it is intended as determined by Owner in its sole and unfettered discretion. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
47. *Supplementary Conditions* – The part of the Contract Documents that amends or supplements these General Conditions.

48. *Supplier* – A manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or any Subcontractor.

49. *Unit Price Work* – Work to be paid for on the basis of unit prices.

50. *Work* – The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives:

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

2. (a) The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not fully, completely and strictly conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner, or failure to complete any portion of the Work in a good and workmanlike fashion or such that it is not fit for its intended purpose.

(b) The word "defective" when modifying the word "Design Professional Services" refers to any departure from the standard of care as defined in paragraph 6.01A.

3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

4. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, "provide" is implied.

7. Unless stated otherwise in the Contract Documents, words or phrases, which have a well-known technical or construction industry or trade meaning, are used in the Contract Documents in accordance with that meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When Contractor delivers the executed Agreements to Owner, Contractor shall also deliver to Owner such Bonds as Contractor may be required to furnish in accordance with paragraph 5.01.A.

2.02 Commencement of Contract Time; Notice to Proceed

A. The Contract Time will commence to run on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time after the Effective Date of the Agreement.

2.03 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Time commences to run. No Work shall be done at the Site prior to the date on which the Contract Time commences to run.

2.04 Before Starting the Work

A. *Preliminary Schedules:* Within 25 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Contractor shall submit the following to Owner for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. A preliminary schedule of Submittals that will list each required Submittal and the times for submitting, reviewing and processing each Submittal;
3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and
4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor shall each deliver to Owner, certificates of insurance as required by paragraph 5.03 which Contractor is required to purchase and maintain in accordance with Article 5.

2.05 Initial Conference

A. Within five days after the Contract Time starts to run, Contractor will arrange a conference attended by Owner and Contractor and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in paragraph 2.04.A, procedures for handling Submittals, processing Applications for Payment, maintaining required records and other matters.

2.06 Initial Acceptance of Schedules

A. At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Contractor will arrange a conference attended by Contractor, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2.04. Contractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until the acceptable schedules are submitted to Owner.

1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's schedule of Submittals will be acceptable to Owner if it provides a workable arrangement for reviewing and processing the required Submittals.
3. Contractor's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed full, absolute, complete and strict compliance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to Owner.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws or Regulations.

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, code, or instruction of a Supplier shall be effective to change the duties and responsibilities of Owner, Contractor, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Proposal or Drawings or Specifications will control except when Owner has approved a Submittal pursuant to paragraph 6.17.B.

B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended only in writing, signed by all parties, to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. Owner's approval of required Submittals (pursuant to paragraph 6.17.B);

2. A Change Order;
3. A Field Order.
4. A Work Directive

3.05 Ownership and Use of Documents

A. Upon payment in-full to Contractor for all design professional services under 6.01 of the General Conditions, all documents including Drawings and Specifications prepared or furnished by Contractor pursuant to this Agreement shall become and remain the property of Owner whether the Project is constructed or not. If Owner uses the said documents (or any part thereof) in connection with any other project without written verification, adaptation, and consent of Contractor, such use shall be at Owner's sole risk and Contractor shall have no liability therefor.

3.06 Electronic Data

A. Copies of data furnished by Owner to Contractor or Contractor to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. The transferring party will correct any errors detected within the 60-day acceptance period.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall furnish surveys describing the Site's physical characteristics, legal limitations and known documented utility locations for the Project and a legal description of the Site.

B. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Differing Site Conditions

A. Contractor shall promptly give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment

shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.

C. No request by Contractor for an equitable adjustment under paragraph 4.02 shall be allowed unless Contractor has given the written notice required; provided that Owner may extend the time prescribed in 9.03.A for giving written notice.

D. The provisions of this paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03 Reference Points

A. Contractor shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments if established by Owner and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 Hazardous Environmental Condition at Site

A. Contractor shall be responsible for any Hazardous Environmental Condition created by any materials brought to the Site by Contractor, Subcontractors, Suppliers or anyone else for whom Contractor is responsible. Any cost or expense associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances by Contractor or those for whom Contractor is responsible, including, but not limited to, the cost of any clean up activities, removals, remediation, responses, damages, fines, administrative or civil penalties or charges imposed on Owner, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the release of any hazardous substances, or any noncompliance with or failure to meet any federal, State, or local standards, requirements, laws, statutes, regulations or the law of nuisance by Contractor (or its Subcontractors, Suppliers, agents, officers, employees, or any other persons, corporations, or legal entities employed, utilized or retained by Contractor) in the performance of the Agreement or related activities, shall be the sole responsibility of and shall be paid by Contractor. To the fullest extent permitted by Laws or Regulations, Contractor shall indemnify and hold harmless Owner, its agents, volunteers, servants, employees, and officials from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all other litigation costs) arising out of or resulting from such Hazardous Environmental Condition created by Contractor or anyone for whom Contractor is responsible. Nothing in this paragraph 4.04.A shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

B. If Contractor encounters a pre-existing Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

C. Contractor shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Contractor written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Article 9.

D. If after receipt of such special written notice Contractor does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or the

amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. Together with the executed Agreement, Contractor shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Contractor's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. These Bonds shall remain in effect as long as necessary to guarantee Contractor's obligations arising from the Agreement, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by one or more surety companies selected by Contractor which are licensed and legally authorized to conduct the business of insurance including surety, within the Commonwealth of Virginia. All Bonds signed by an agent must be accompanied by a certified copy of the power of attorney for the surety's attorney-in-fact.

C. If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in the Commonwealth of Virginia or it ceases to meet the requirements of this Article shall within twenty days thereafter substitute another Bond and surety, both of which shall comply with the requirements this Article

5.02 Certificates of Insurance

Prior to commencing any Work, Contractor shall deliver to Owner, certificates of insurance (and other evidence of insurance requested by Owner) which Contractor is required to purchase and maintain. Evidence of replacement coverage shall be provided to the Owner 20 days prior to expiration of any such policies, so that there shall be no interruption in Work due to lack of proof of insurance coverage required by the Contract Documents. Owner shall not be liable for any delays (or costs or damages resulting there from) resulting from Contractor's failure to obtain the insurance required by this Article. Vendors, suppliers, material dealers and others who merely transport, pick up, deliver or carry materials, parts, or equipment or any other items or persons to or from the Project Site and those who furnish material worked to a special design but perform no operations at the Project Site shall not be required to furnish a certificate(s) or other evidence of insurance to Owner.

5.03 Contractor's Liability Insurance

A. Contractor shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and with such as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work including, but not limited to Design Professional Services and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

4. Claims for damages insured by reasonably available personal injury liability coverage that are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (ii) by any other person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting there from; and

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The insurance required by this Article shall be written for not less than any limits of liability in the Contract Documents, or required any Laws or Regulations, whichever is greater. Contractor shall furnish insurance with the following minimum limits:

1. Worker's Compensation:

a. Coverage

1. Employer's Liability: \$1,000,000 Each Occurrence
2. Disease Policy Limit: \$1,000,000
3. Disease - Each Employee: \$1,000,000

b. Requirements

1. Voluntary Compensation Endorsement
2. Waiver of Subrogation in favor of Owner and General Contractor
3. United States Long Shore & Harbor Worker's Endorsement
4. Jones Act Endorsement

2. Commercial General Liability

a. Coverage

1. \$1,000,000 Each Occurrence
2. \$2,000,000 General Aggregate
3. \$2,000,000 Completed Operations/Products Aggregate
4. \$1,000,000 Personal Injury
5. \$5,000 Medical Payments

b. Requirements

1. Contractual Liability
2. X, C, and U Perils Coverage
3. Completed Operations Extended to the 10 years or the Statute of Repose, whichever is less
4. Broad Form Property Damage
5. Fellow Employee Coverage
6. No Residential Exclusions shall apply
7. Additional Insured - Owner and Contractor to be included as Additional Insureds per form CG 20 10 11 85 or equivalent, and this coverage shall include: Premises/Operations coverage, Products/Completed Operations coverage, and apply on a Primary and Non-contributory basis.
8. No restrictions with regards to the scope of work being performed on the jobsite.

3. Errors and Omissions

a. Coverage: \$2,000,000

b. Requirement: Design Professional Liability

4. Comprehensive Automobile Liability:

a. Coverage

1. Bodily Injury: \$1,000,000 Each Person, \$1,000,000 Each Accident;
2. Property Damage: \$1,000,000 Each Occurrence

b. Requirements

1. Covers owned, non-owned, or hired vehicles

2. Additional Insured – Owner and contractor to be included as Additional Insureds

5. Excess Liability:

a. Coverage

1. Contractor - \$5,000,000 per occurrence, \$5,000,000 aggregate
2. Sub-Contractor - \$1,000,000 per occurrence, \$1,000,000 aggregate

b. Requirements - Additional Insured – Owner and Contractor to be included as Additional Insured utilizing form CG 20 10 11 85 or equivalent, and this coverage shall apply excess of all underlying coverage.

6. Builder Risk: Contractor shall provide builder's risk coverage on the full insurable value of the Work.

C. The policies of insurance required by paragraph 5.03 shall:

1. Include as additional insureds the Owner, and its agents, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. Contain a provision or endorsement that the coverage afforded will not be canceled, reduced, or renewal refused until at least thirty days' prior written notice has been given to Owner;

3. Remain in effect at least until Final Acceptance of the entire Project and at all times thereafter when Contractor may be correcting, removing or replacing defective Construction in accordance with paragraphs 12.06 and 12.07; and

4. With respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Contractor shall furnish Owner evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.04 Waiver of Subrogation

The insurance policies obtained by Contractor and Subcontractors pursuant to paragraph 5.03 shall be endorsed to include a waiver of subrogation in favor of indemnified parties or entities; provided, however, that all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

5.05 Acceptance of Bonds and Insurance; Option to Replace

If Owner has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by Contractor in accordance with Article 5 on the basis of their not complying with the Contract Documents, Owner shall so notify Contractor in writing after receipt of the certificates (or other evidence requested) required by paragraph 2.04.B. Contractor shall provide to Owner such additional information in respect of insurance provided as Owner may reasonably request. If Contractor does not purchase or maintain all of the Bonds and insurance required by the Contract Documents, Contractor shall notify Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, Owner may elect to obtain equivalent Bonds or insurance to protect Contractor's interests at Contractor's sole cost and expense, and a Change Order shall be issued to adjust the Contract Price accordingly.

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES

6.01 Design Professional Services

A. *Standard of Care.* The standard of care for Design Professional Services performed or furnished under this Agreement will be the reasonable care, compliance and skill ordinarily used by members of the engineering or the particular design profession practicing under similar conditions at the same time and locality, including without limitation, in preparing plans and specifications and in making certain that the Construction is properly completed pursuant to the Drawings, Plans and Specifications.

B. *Preliminary Design Phase.* After the Contract Times commence to run, Contractor shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;
2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services and assist Owner in obtaining such reports, data, or services;
3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Contractor with whom consultation is to be undertaken in connection with the Project;
4. Obtain such additional geo-technical and related information that it deems necessary for performance of the Work;
5. On the basis of the Conceptual Documents and Contractor's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;
6. Identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

C. *Final Design Phase.* After written acceptance by Owner of the preliminary design phase documents Contractor shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Contractor and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute);
2. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;
3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and
4. Identify any deviations from other Contract Documents in accordance with paragraph 6.17.B.

6.02 Supervision and Superintendence of Construction

A. Contractor shall supervise, inspect and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction. Contractor shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep Owner as to the quality and progress of the Construction.

B. At all times during the progress of Construction, the Contractor shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to Owner except under extraordinary

circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

6.03 Labor, Working Hours

A. Contractor shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.

6.04 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Contractor shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the Work.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If reasonably required by Owner, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 Not Used

6.06 Concerning Subcontractors, Suppliers, and Others

A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.

B. Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

C. Contractor shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.

D. Contractor shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner through Contractor.

E. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate Design Sub-agreement or Construction Sub-agreement between Contractor and the Subcontractor or Supplier that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.05, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Owner's Consultant, and all other additional insureds (and their officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any

such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.

B. Contractor shall indemnify and hold harmless Owner, its agents, servants, employees, and officials from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all litigation costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not identified in the Conceptual Documents.

6.08 Permits

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Contractor shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Contractor shall pay all charges of public utility owners for connections to the Work.

6.09 Laws or Regulations

A. Contractor shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.

B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all costs arising therefrom.

C. Changes in Laws or Regulations not known on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws or Regulations of the place of the Project that are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas.

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site, and shall not unreasonably encumber the Site with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim at law.

3. To the fullest extent permitted by Laws or Regulations, Contractor shall indemnify and hold harmless Owner, its agents, servants, employees, and officials from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and litigation costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Construction.

B. *Removal of Debris.* During the performance of the Construction, Contractor shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning.* Prior to Substantial Completion, Contractor shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Contractor shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures.* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Shop Drawings, Specifications, Addenda, Change Orders, and Field Orders in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals, including a reproducible set of record drawings, a hard copy set of the record drawings, and drawings in an electronic format (CADD) will be delivered to Owner.

6.13 Safety and Protection

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;
2. All Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

B. Contractor shall comply with applicable Laws or Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor.

D. Contractor's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Contractor in accordance with paragraph 13.08.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. The safety representative shall be on Site at all times while Work is in progress. The safety representative may be the on-site superintendent.

6.15 Hazard Communication Programs

A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury or loss. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Submittals

A. Contractor will provide a copy of all approved Submittals to Owner.

B. Owner's review of Submittals shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has in a separate written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.

6.18 Continuing the Work

A. Contractor shall diligently commence, prosecute and complete and shall continue the Work and adhere to the master schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

A. Contractor shall:

1. Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.
2. Assist Owner in training staff to operate and maintain the Work.
3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

6.20 Contractor's General Warranty and Guarantee

A. Contractor warrants and guarantees to Owner that all Design Professional Services and Construction will be in full, absolute, complete and strict compliance with the Contract Documents, will not be

defective, and will meet or exceed the applicable standard of care. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than Contractor, subcontractors, sub-consultant, or suppliers or any other individual or entity for whom Contractor is responsible; or
2. Normal wear and tear under normal usage.

B. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by Owner;
2. The making of any progress or final payment;
3. The issuance of a certificate of Substantial Completion;
4. Use or occupancy of the Work or any part thereof by Owner;
5. Any acceptance by Owner or any failure to do so;
6. Any review and approval of a Submittal;
7. Any inspection, test or approval by others; or
8. Any correction of defective Professional Design Services and/or Construction by Owner.

6.21 Indemnification

A. It is understood and agreed that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor, its subcontractors, sub-consultants, agents or employees under or in connection with this Agreement or the performance or failure to perform the Work required by this Agreement, including, without limitation, all Design Professional Services and Construction. To the fullest extent permitted by Laws or Regulations, Contractor shall indemnify and hold harmless Owner, its agents, volunteers servants employees and officials from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all litigation costs) suffered by any indemnified party or entity arising out of or resulting from (a) Design Professional Services and/or the performance of Construction by Contractor or those for whom Contractor is legally liable, including its subcontractors, sub-consultants, any supplier or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work; and (b) the violation of any Laws or Regulations applicable to this Agreement. Upon written demand by Owner, Contractor shall assume and defend through attorneys selected by the Contractor at Contractor's sole expense any and all such suits or defense of claims made against Owner, its agents, volunteers, servants employees or officials.

B. In any and all claims against Owner, its agents, volunteers, servants, employees and officials by any employee (or the survivor or personal representative of such employee) of Contractor, any subcontractor, sub-consultant, any supplier, any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.21.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such subcontractor, sub-consultant, supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 Related Work at Site

A. Owner may perform other Work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. Written notice thereof will be given to Contractor prior to starting any such other work; and
2. Contractor may make a Claim therefor as provided in Article 9 if Contractor believes that such performance will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. Contractor shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Contractor's Work depends upon work performed or services provided by others under this Article 7, Contractor shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;
2. The specific matters to be covered by such authority and responsibility will be itemized; and
3. The extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 General

A. The responsibilities of Owner include the following:

1. Owner shall designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, make decisions with respect to

performance of the Work, and shall provide such other services as may be agreed upon. Owner may assign various inspectors to inspect the progress and quality of the Work;

2. Owner shall make payments to Contractor promptly when they are due as provided in paragraph 13.03 and 13.08;
3. Furnish the Site as set forth in paragraph 4.01.A;
4. Furnish to Contractor, as required for performance of Contractor's Services, if available and in the possession of Owner, the following, all of which Contractor may use and rely upon in performing services under this Agreement:
 - a. Environmental assessment and impact statements;
 - b. Property, boundary, easement, right-of-way, topographic, and utility surveys;
 - c. Property descriptions;
 - d. Zoning, deed, and other land use restrictions;
 - e. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and
 - f. All subsurface data at or contiguous to the Site which Owner may have obtained.
5. Provide information known to or in the possession of Owner relating to the presence of materials and substances at the Site that could create a Hazardous Environmental Condition.
6. Process submittals, drawings, and time sensitive questions in a timely fashion so as not to delay the Work.

8.02 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of design and/or construction or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.03 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in paragraph 4.04.

8.04 Resident Project Representation

A. Owner shall designate a Resident Project Representative. The Resident Project Representative has the authority to approve changes in the scope of the project and shall be available during working hours and as often as may be required to render decisions and furnish information in a timely manner. Owner may at any time in its discretion change the Resident Project Representative with prior written notice to Contractor. Contractor shall be entitled to reply on all changes approved by Owner's Resident Project Representative.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, in writing, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order. Upon receipt of any such documents, Contractor shall promptly proceed with

the Work involved that will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Construction as provided in paragraph 12.04.

9.03 Claims

A. *Notice.* If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefore. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than 15 days after the start of the occurrence or event giving rise to the Claim.

B. *Documentation.* The claiming party shall submit substantiating documentation within 30 days after delivery of the notice required by paragraph 9.03.A.

C. *Decision.* The other party shall render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.

D. *Time Limit Extension.* The time limits of paragraphs 9.03.B and 9.03.C may be extended by mutual written agreement.

9.04 Execution of Change Orders

A. Owner and Contractor shall execute appropriate Change Orders covering:

1. Changes in the Work which are (i) ordered by Owner pursuant to paragraph 9.01, (ii) required because of acceptance of defective Construction under paragraph 12.08 or Owner's correction of defective Work under paragraph 12.09 or (iii) agreed to by the parties.

9.05 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 -- COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

A. *Costs Included.* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 10.01.B:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor.

a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site along with the project manager, project manager assistants, and support staff located at the Contractors home office while specifically working on this project. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by Owner.

b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this paragraph 10.01.A.1, Contractor shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors (excluding payments for Design Professional Services pursuant to paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee.

4. Payments made by Contractor for Design Professional Services provided or furnished under a Design Sub-agreement.

5. Costs of special consultants (including but not limited to testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

6. Supplemental costs including the following items:

a. The proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.

c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Contractor in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. Cost of premiums for all Bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded.* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.01.A.

C. *Contractor's Fee.* Contractor's fee shall be as set forth in the Agreement. When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in paragraph 11.01.C.

D. *Documentation.* Whenever the cost of any Work is to be determined pursuant to paragraph 10.01.A and 10.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

10.02 Cash Allowances

A. The Contract Price includes all allowances so named in the Contract Documents. Contractor shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Contractor agrees that:

1. The allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
2. Except as set forth in the Contract Documents, Contractor's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have

been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.03 Unit Prices

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Owner and testing company if applicable.

B. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

ARTICLE 11 -- CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIME

11.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party promptly in accordance with paragraph 9.03.A.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 10.03); or
2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum
3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 10.01) plus an Contractor's Fee for overhead and profit (determined as provided in paragraph 11.01.C).

C. Contractor's Fee: The Contractor's fee for overhead and profit on Change Orders shall be determined as follows:

1. A fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under paragraphs 10.01.A.1.a and 10.01.A.2, the Contractor's fee shall be 15 percent;

b. For costs incurred under paragraph 10.01.A.3 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Contractor's fee shall be five percent;

c. Where one or more tiers of subcontracts are included in the basis of Cost of the Work plus a fee, paragraphs 11.01.C.1.a. and 11.01.C.1.b. set forth that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor will be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change.

11.02. Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to paragraph 9.03.A.

B. *Delays Beyond Contractor's Control.* Where Contractor is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Contractor, the Contractor shall be entitled to a non-compensatory time extension in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in paragraph 11.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by governmental agencies, fires, floods, terrorist attacks, epidemics, unusually severe weather conditions, or acts of God. Weather shall be considered "unusually severe" only if a weather condition, or any combination of weather conditions, causes Contractor to lose a number of Work days during a calendar month where the total number of lost days for that calendar month exceeds the number of budgeted lost work days listed below for that calendar month. Weather-related delay claims shall be subject to the notice requirements of paragraph 9.03.A. Upon timely written notice and documentation of such delay, Contractor shall be entitled to a compensatory time extension only in accordance with paragraph C following, and the time for performance as herein specified shall be adjusted by adding the number of excess work days lost because of the weather condition(s) to the duration of the activities actually affected by the weather condition(s). At its sole and unfettered discretion, Owner may elect to require Contractor to recover the time lost as a result of such delay, under which circumstances, Owner shall pay Contractor the reasonable, actual additional cost of recovering lost time, but no additional fee. The remedy set forth in this sub-section shall be Contractor's sole and exclusive remedy for an excusable delay as defined in this sub-section. A work day is defined as Monday through Friday, unless prior written notice is provided by Contractor to Owner that it intends to perform Work on any given Saturday and/ or Sunday. Contractor shall not be entitled to weather-related time extensions or, if applicable, costs for recovering lost time, for any Saturday or Sunday for which prior written notice was not provided. As stated herein, Contractor shall anticipate the potential loss of the number of work days listed below for each calendar month due to weather, and shall schedule the Work accordingly:

January = 6; February = 6; March = 6; April = 6; May = 4; June = 4; July = 4; August = 3; September = 3; October = 3; November = 4; December = 6

C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

D. Owner shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all litigation costs) sustained by Contractor on or in connection with any other project or anticipated project.

E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor. All delays within the control of Contractor shall be subject to the Liquidated Damages provision contained in Paragraph 3.03 of the Comprehensive Agreement.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE DESIGN PROFESSIONAL SERVICES AND/OR CONSTRUCTION

12.01 Notice of Defects

A. Owner shall give Contractor prompt written notice of all defective Design Professional Services and/or Construction of which Owner has actual knowledge. All defective Design Professional Services and/or Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

A. Owner, Owner's inspectors, other representatives, consultants and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and programs so that they may comply therewith as applicable.

12.03 Tests and Inspections

A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Contractor shall assume full responsibility for arranging and obtaining such Special Inspections, Building Code inspections, tests or approvals, pay all costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

B. Contractor shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.

C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Contractor without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation at Contractor's expense unless Design/ Builder has given Owner timely notice of Contractor's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Contractor's expense.

B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Contractor, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Contractor shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all litigation costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may

make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Article 9.

12.05 Owner May Stop Construction

A. If the Design Professional Services and/or Construction are defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Contractor to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other party, nor shall the exercise of such right entitle the Contractor to any change in the Contract Price or Contract Times.

12.06 Correction or Removal of Defective Design Professional Services and or/ Construction

A. Owner will have authority to disapprove or reject defective Design Professional Services and/or Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Contractor shall promptly, as directed, either correct all defective Design Professional Services and/or Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with non-defective Construction. Contractor shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all litigation costs) arising out of or relating to such correction or removal.

12.07 Correction Period

A. If within two years after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Design Professional Services and/or Construction is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Design Professional Services and/or Construction, or, if it has been rejected by Owner, remove the Construction from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting there from. If Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Design Professional Services and/or Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all litigation costs, and all costs of repair or replacement of work of others) will be paid by Contractor. Nothing herein shall be construed to change, limit or waive any rights or remedies to which Owner may be entitled, including, without limitation, recovery for breach of contract, professional malpractice, or otherwise, within the applicable Statute of Limitations.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

12.08 Acceptance of Defective Design Professional Services and/or Construction

A. If, instead of requiring correction or removal and replacement of defective Design Professional Services and/or Construction, Owner prefers to accept it, Owner may do so. Contractor shall pay all costs, losses, and damages (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all litigation costs) attributable to Owner's evaluation of and determination to accept such defective Design Professional Services and/or Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Design Professional Services and/or Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Contractor to Owner.

12.09 Owner May Correct Defective Design Professional Services and/or Construction

A. If Contractor fails within a reasonable time after written notice from Owner to correct defective Design Professional Services and/or Construction or to remove and replace rejected Construction as required by Owner in accordance with paragraphs 12.06.A or 12.07.A, or if Contractor fails to perform the Construction in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after 14 days written notice to Contractor, correct and remedy any such deficiency.

B. In connection with the corrective and remedial action described herein, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Construction, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's consultants, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all litigation costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this paragraph 12.09 will be charged against Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9, but shall not be subject to the notice requirement contained in paragraph 9.03.

D. Contractor shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 12.09.

ARTICLE 13 – PAYMENTS TO CONTRACTOR AND COMPLETION

13.01 Schedule of Values

A. The Schedule of Values established as provided in paragraph 2.04.A.3 will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 Application for Progress Payment

A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Contractor shall submit to Owner for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be

accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, with "Owner as Beneficiary as Interest May Appear" stated on the insurance certificate, all of which will be satisfactory to Owner.

B. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.

C. The amount of retainage with respect to progress payments will be set at 5%.

13.03 Progress Payments

A. *Procedure.* Progress payments shall be made by the Owner to the Contractor according to the following procedure:

1. Owner will, within five days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Contractor indicating in writing its reasons for refusing to accept the Application. Not more than thirty days after receipt such Application the amount will become due and when due will be paid by Owner to Contractor.
2. If Owner should fail to pay Contractor at the time the payment of any amount becomes due, then Contractor may, at any time thereafter, upon serving written notice that it will stop the Work within seven days after receipt of the notice by Owner, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner except as set forth in paragraphs B and C following. Contractor shall be entitled to an extension of the Contract time on account of work stoppage resulting from nonpayment by Owner.
3. Payments due but unpaid shall bear interest at the rate specified in the Agreement.
4. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

B. *Reduction in or Refusal to Make Payment.* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

1. the Construction is defective, or completed Construction has been damaged by Contractor or its subcontractors requiring correction or replacement; or
2. the Contract Price has been reduced by Change Order; or
3. Owner has been required to correct defective Construction or complete Work in accordance with paragraph 12.09.A; or
4. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.A.; or
5. Claims have been made against Owner on account of Contractor's performance or furnishing of the Work; or
6. Liens have been filed in connection with the Work, except where Contractor has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

7. Pursuant to the terms of the Contract Documents, there are other items entitling Owner to a set off against the amount for which application is made.

C. If Owner refuses to make payment of the full amount requested by Contractor, Owner must give Contractor immediate written notice stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount withheld. Owner shall promptly pay Contractor the amount withheld or any adjustment thereto agreed to when Contractor corrects to Owner's satisfaction the reason for such action.

13.04 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.05 Substantial Completion

A. When Contractor considers the Work ready for its intended use Contractor shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Contractor shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Contractor in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Contractor a certificate of Substantial Completion that shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Contractor a written determination as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.

B. Owner will have the right to exclude Contractor from the Site after the date of Substantial Completion, but Owner will allow Contractor reasonable access to complete or correct items on the list of items to be completed.

13.06 Partial Utilization

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Contractor agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/ Builder's performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Owner that such part of the Construction is substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Construction. Contractor at any time may notify Owner in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Owner and Contractor shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Contractor in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

13.07 Final Inspection

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Contractor and will notify Contractor in writing of all particulars in

which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.08 Final Payment

A. Application for Payment.

1. After Contractor has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in paragraph 6.12) and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Article 5; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.
3. In lieu of such releases or waivers of Liens specified in paragraph 13.08.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Final Payment and Acceptance. If Owner is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Owner will, within thirty (30) days after receipt of the final Application for Payment, give written notice to Contractor that the Work is acceptable. Otherwise, Owner will return the Application to Contractor, indicating in writing the reasons for refusing to process final payment, in which case Contractor shall make the necessary corrections and resubmit the Application.

C. Payment Becomes Due. Thirty days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Contractor.

13.09 Final Completion Delayed

A. If, through no fault of Contractor, final completion of the Work is significantly delayed, Owner shall, upon receipt of Contractor's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Contractor that will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be allowed an adjustment in the

Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Article 9.

14.02 Owner May Terminate for Cause

A. The occurrence of any one or more of the following events constitutes a default under the Agreement and justifies termination for cause:

1. Contractor's failure to timely commence, prosecute, and/or complete the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the master schedule established under paragraph 2.06.A as adjusted from time to time), and failure to cure same upon notice.
2. Contractor's failure to fully comply with any Laws or Regulations of any public body having jurisdiction, and failure to cure same upon notice.
3. Contractor's violation of any provision of the Contract Documents, and failure to cure same upon notice.

B. If one or more of the events identified in paragraph 14.02.A occur, Owner may, after giving Contractor (and the surety, if any) 14 days written notice, terminate the services of Contractor, take possession of any completed Drawings and Specifications prepared by or for Contractor (subject to the indemnification provisions of paragraph 3.05.A), exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or other litigation costs) such excess will be paid to Contractor. If such costs, losses and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

C. Notwithstanding paragraph 14.02.B, Contractor's services will not be terminated if Contractor begins, within 14 days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice or within a specified time depending upon the failure.

D. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

14.03 Owner May Terminate for Convenience

A. Upon 14 days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Contractor shall withdraw its personnel and equipment, and shall cease performance of any further work under this Agreement, and shall turn over to Owner any Work completed or in process for which payment has been made. In the event Owner terminates for convenience, Contractor shall be paid (without duplication of any items) for:

1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and

3. Reasonable expenses directly attributable to termination.

B. Except as provided for in this Article, Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination, or for any portion of the Work not performed.

ARTICLE 15 – MISCELLANEOUS

15.01 Giving Notice

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail, postage prepaid, to the last business address known to the giver of the notice. If either party can provide proof of actual notice through other means, such notice shall be deemed acceptable under this Agreement.

15.02 Computation of Times

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

15.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or
2. Any special warranty or guarantee; or
3. Other provisions of the Contract Documents.

15.04 Survival of Obligations

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

END of Standard General Conditions of the Agreement Between Owner and Contractor

Proposal Cost Form

December 21, 2009, revised May 24, 2010

Notes

Amount

1	Design & Engineering		\$	1,100,000
2	Divison 1	General Conditions	\$	865,000
9	Divison 2	Site Work	\$	995,000
	Divison 3	Concrete	\$	245,000
	Divison 4	Masonry	\$	834,000
	Divison 5	Metals	\$	230,000
	Divison 6	Woods & Plastics	\$	330,000
	Divison 7	Moisture & Thermal	\$	553,000
	Divison 8	Windows & Doors	\$	380,000
	Divison 9	Interior Finishes	\$	846,000
3	Divison 10	Specialties	\$	65,000
3, 4	Divison 11	Equipment	\$	335,000
3, 5	Divison 12	Furnishings	\$	577,000
3, 6	Divison 13	Special Construction	\$	100,000
	Divison 14	Conveying Systems	\$	-
7	Divison 15	Mechancial	\$	1,990,000
8	Divison 16	Electrical	\$	755,000
	Design-Builder Contingency		\$	310,000
	Sub-total		\$	10,510,000
	Owners Contingency, LS		\$	527,000
		Total	\$	11,037,000

- 1 To included all consultants, pre-construction services, geo-technical reports, site surveys, review fees, LEED registration fees, etc.
- 2 To include all permits, fees testing, inspections, special inspections, bonds, insurance, etc.
- 3 Provide a complete detail listing of all items included in the total for these Divisions
- 4 To include all equipment to operate the facility.
- 5 To include all fabrics, artwork, casework, window treatments, rugs & mats, multiple seating groups, & interior plants and planters, including office systems furniture.
- 6 To include the solar hot water heater system and the rain water collection system. Also includes the complete facility security systems.
- 7 To include the geo-thermal system for heating and cooling
- 8 To include conduits through-out the facility for telecommunications and computer/data systems for installation of those by the owner.
- 9 Unit cost for undercut, haul, and select fill - \$35.50/cy

Adoption Friendly Animal Shelter

Revisions to the Scope of Work

Exhibit B, page 2 of 2

June 4, 2010

The following revisions to the Request for Proposal (RFP) dated October 13, 2009, Addendum No.1 to that RFP dated November 12, 2009, and Armada-Hoffler Response to that RFP and Addendum dated December 22, 2009 with Part 1 of 2, Public Information and Part 2 of 2, Proprietary Information, and the Responses to Additional Questions From the City of Virginia Beach Regarding the Virginia Beach Adoption-Friendly Animal Care & Control Facility dated January 18, 2010) are included in the scope and cost of the work.

1. Delete the requirement for installation of water and sewer lines under Birdneck Road. A 10" water line capped off with a valve is now available on the site. Additionally, an 8" gravity sewer with a collection man-hole has been installed on the site.
2. Add pump(s) on the sanitary sewer to push sewage to the new collection manhole.
3. Delete the right turn lane. The City is separately constructing a right turn lane, median opening, and opposing left turn lanes to align with the entrance on the north side of the parcel. This work will include a VDOT standard entrance apron to the right-of-way/property line.
4. Revise the proposed site plan to eliminate the second entrance on the south side of the parcel as a part of the final project. The existing south entrance may be used for a construction entrance.
5. Delete the wetlands mapping and delineation. The City is separately accomplishing that requirement. However, retain the work item to prepare the Joint Permit Application and preparation of a mitigation plan.
6. Delete the \$85,000 allowance for the wetlands mitigation bank. The City will pay this fee directly to the regulatory agencies as required.
7. Upgrade the flat roof material to that required in the RFP and as addressed in the Responses to Additional Questions.
8. Provide LED parking lot lighting.
9. Delete the installation of landscape plant material and delete the landscape irrigation system. Site fine grading, topsoil, sod and/or seeding, and a landscaping design will remain in the scope of work.
10. In accordance with the Soils Report incorporated in the RFP response, the removal of at least 18" but not more than 42" of existing material within the footprint of the Shelter building, and the replacement with select fill, is included. No other undercutting is included. The unit cost for undercutting and select fill, if needed, is established on Exhibit B, Page 1 of 2, Note #9.

End of document

**Adoption Friendly Animal Shelter
"Exhibit C"
PROFESSIONAL FEES**

Architectural Consultants

Principal	\$135/hour
Senior Architect/Designer	\$110/hour
Architect/Designer	\$105/hour
Technician/Designer III	\$80/hour
Technician/Designer II	\$80/hour
Clerical	\$55/hour

Structural Engineers

Principal	\$180/hour
Sr. Structural Engineer	\$150/hour
Project Engineer	\$130/hour
Specifications Writer	\$130/hour
Sr. CAD Technician	\$120/hour
Special Inspector	\$120/hour
CAD Technician	\$100/hour
Clerical	\$55/hour

Mechanical & Electrical Engineers

Principal	\$225/hour
Senior Mechanical Engineer	\$195/hour
Senior Electrical Engineer	\$195/hour
Mechanical Engineer/Technician	\$155/hour
Electrical Engineer/Technician	\$155/hour
Clerical	\$115/hour

Civil Engineer

Principal	\$140/hour
Civil Engineer	\$110/hour
Project Engineer	\$100/hour
Specifications Writer	\$100/hour
CAD Technician	\$90/hour
Clerical	\$55/hour



CITY OF VIRGINIA BEACH

WOMAN, SERVICE DISABLED AND MINORITY PARTICIPATION PLAN

Contractor Name: Armada Hoffer Construction company

BID/RFP Number: PWCN-10-0013

Pursuant to section 2-224.3/2-224.5 of the Virginia Beach City Code, bidder/Offeror must submit a Woman, Service Disabled and Minority Participation Plan. Failure to submit a complete Woman, Service Disabled and Minority Participation Plan, answering all questions set forth below, may result in the bid/proposal being declared nonresponsive.

(1) Subcontractor Utilization:

- a) Will you be using any subcontractors? Yes X No If no, skip to item (1) e. If yes, state total estimated amount to be subcontracted: \$ TBD.
- b) What steps have you taken to solicit subcontracting bids from woman and minority-owned subcontractors? If none, please so indicate.

We have contracted with The Miles Agency to supplement our solicitation process, which will begin in 30 days.

- c) Please list the name, address, contact person and phone number of any woman or minority-owned businesses **solicited**.

Business Name	Primary Contact	Address	Phone	

- * Business Classification Legend:
- Minority Man (M)
 - Non-Minority Woman (W)
 - Minority Woman (MW)
 - Service Disabled Veteran (SDV)
 - All Other (AO)

d) Identify all proposed subcontractors to be used on this contract below:

Business Name	Contact Information (Primary Contact, Address, Phone)	Work to be Performed	Estimated Amount of Subcontract Work	% of Total Contract	*
Athdel Ventures, Inc. dba The Miles Agency	Delceno C. Miles PO Box 68228, Virginia Beach, VA 23471 (757) 499-9627	SWAM Consultant	\$10,000	0.1	MW

- * Business Classification Legend:
 Minority Man (M)
 Non-Minority Woman (W)
 Minority Woman (MW)
 Service Disabled Veteran (SDV)
 All Other (AO)

e) If you have elected not to utilize any woman or minority owned businesses, please provide explanation of the decision.

(2) Good-Faith Efforts:

- a) Are there any additional good-faith minority-owned, service disabled veteran-owned or woman-owned business participation efforts that you intend to make in connection with this contract? If none, please so indicate.

We will solicit proposals in all trades from qualified SWAM vendors
when the design is complete.

- b) Not including this RFP/Bid, have you undertaken any other good-faith minority-owned, service disabled veteran-owned or woman-owned business participation efforts in the past two years? If none have been undertaken, so indicate and include a statement explaining why you have made no good-faith minority-owned and woman-owned business participation efforts in the past two years.

We routinely solicit participation on local municipal as well as federal
funded projects.

(3) Workforce Composition:

Total # of Employees 83

Please describe the Workforce Composition of your company:

Type of Employee	# Employees	% of Employees	% Managers	% Supervisors	% Professional	% Non-Professional
Woman	19	22%	3.6%	2.5%	6%	13.2%
Minority	29	35%	8.4%	6%	9.6%	14.4%
Service Disabled Veteran	0	0	0	0	0	0
All Others	36	43.3%	33.7%	16.8%	14.4%	10.8%

Manager: is responsible for directing and controlling the work and staff of a business, or of a department within it.

Supervisor: oversees and guides the work or activities of a group of other employees.

Professional: requires extensive education in their field (undergraduate degree or higher) or a specialized certification from an accredited agency.

Non-Professional: not in one of the above categories.

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
6/4/2010

PRODUCER Phone: 757-456-0577 Fax: 757-456-5296
 Rutherford
 222 Central Park Avenue
 Suite 1340
 Virginia Beach VA 23462

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Zurich American Insurance Company	16535
INSURER B: Nat'l Union Fire Ins Co Pitts	19445
INSURER C: Travelers Prop & Casualty Co	25674
INSURER D:	
INSURER E:	

INSURED
 Armada Hoffer Construction Co
 222 Central Park Ave.
 Suite 2100
 Virginia Beach VA 23462-2840

COVERAGES
 THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADDL LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENTL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	GL0386618206	1/1/2010	1/1/2011	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> Comp \$1000 Ded <input checked="" type="checkbox"/> Coll \$1000 Ded	BAP386618306	1/1/2010	1/1/2011	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EAACC \$, AGG \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EAACC \$, AGG \$
B	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$	BE28360785	1/1/2010	1/1/2011	EACH OCCURRENCE \$25,000,000 AGGREGATE \$25,000,000 \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below:	WC386618406	1/1/2010	1/1/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	OTHER Master Builder's Risk Including Plate Glass	QT6606090C096TIL10	3/1/2010	3/1/2011	\$50,000,000 Limit \$5,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 RE: Virginia Beach Animal Care and Adoption Center, 350 Birdneck Road, Va Beach, VA 23451. City of Virginia Beach is Additional Insured under the General Liability policy as respects to work performed by the insured, as required by written contract.

CERTIFICATE HOLDER
 City of Virginia Beach
 Attn: Richard Martinec, Public Works
 2405 Courthouse Drive
 Virginia Beach VA 23456

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE *Jacqueline L. Jansen*

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CITY OF VIRGINIA BEACH
DEPARTMENT OF PUBLIC WORKS

CONTRACT PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we, Armada Hoffer Construction Company of Virginia of Virginia Beach, VA (hereinafter called the "Principal"), and the Fidelity and Deposit Company of Maryland, a corporation created and existing under the laws of the State of Maryland and having its principal office in the City of Baltimore, and authorized to transact business in the Commonwealth of Virginia as Surety (hereinafter called the "Surety") are held and firmly bound unto the CITY OF VIRGINIA BEACH (hereinafter called the "Owner") in the full and just sum of Eleven Million Thirty Seven Thousand and NO/100 Dollars (\$ \$11,037,000.00), lawful money of the United States of America, for the payment of which well and truly to be made, the said Principal binds itself and its successors and assigns, all jointly and severally, firmly by these presents.

WHEREAS, said Principal has entered into a certain written agreement with Owner, dated as of the 1st day of July, 2010, (hereinafter called the "Contract", for Design, Construction, and Outfitting of the Adoption-Friendly which contract is by reference made a part hereof. Animal Shelter

NOW, THEREFORE, THE CONDITIONS OF THE ABOVE OBLIGATIONS ARE SUCH THAT, if the said Principal and its successors and assigns, or any or either of them shall well and truly and in good sufficient and workmanlike manner perform or cause to be performed said contract, and any amendment, or extension of or addition thereto and each and every of the covenants, promises, agreements, warranties, and provisions herein stipulated and contained to be performed by said Principal, and complete the same within the period therein mentioned, and in each and every respect, comply with the conditions therein mentioned to be complied with by the said Principal, and fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure so to do and fully reimburse and repay the Owner all expense which it may incur in making good any such default, then these obligations shall be null and void, otherwise they shall remain in full force and effect.

The Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligations of said Surety and of its successors and assigns, and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the said contract or the work to be performed there under, or by any payment there under before the time required therein, or by any waiver of any provision thereof; or by any assignment, subletting or other transfer thereof; or of any part thereof, or of any work to be performed or of any moneys due or to become due there under; and said Surety, for itself and its successors and assigns, does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors, and other transferees, shall have the same effect as to said Surety and its successors and assigns, as though done or omitted to be done by and in relation to said Principal.

Whenever Principal shall be declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations, there under, the owner shall have the right, at its option, to require the Surety to promptly proceed to remedy the default within 30 days of notice by proceeding or procuring others to proceed with completing the contract with its terms and conditions; and all reserves, deferred payments, and other funds provided by the Contract to be paid to Principal shall be paid to Surety at the same times and under the same conditions as by the terms of that Contract such funds would have been paid to Principal had the Contract been performed by Principal; and Surety shall be entitled to such funds in preference to any assignee of Principal or any adverse claimant. Notwithstanding the above, the Owner shall have the right, with the approval of the Surety which shall not be unreasonably withheld, to take over and assume completion of the Contract and be promptly paid in cash by the Surety for the cost of such completion less the balance of the Contract price.

Signed and sealed this 12th day of July, 2010.

PRINCIPAL

(CORPORATE SEAL)

Armada Hoffler Construction Company of Virginia

By John C. Davis
JOHN C. DAVIS



SURETY

Fidelity and Deposit Company of Maryland
1400 American Lane Tower 1 19th Floor
Schaumburg IL 60196

COUNTERSIGNED: Resident Agent

State of Virginia

(Mailing Address)

By Jacqueline L. Joiner
Jacqueline L. Joiner

Phone No: 804-780-0511

By Jacqueline L. Joiner
Jacqueline L. Joiner

(CORPORATE SEAL)



ATTORNEY-IN-FACT

(This Bond shall be accompanied
with Attorney-in-Fact's
authority from Surety)

CITY OF VIRGINIA BEACH
DEPARTMENT OF PUBLIC WORKS

CONTRACT PAYMENT BOND

ISSUED PURSUANT TO SECTION 2.2-4337, ET. SEQ.
OF THE CODE OF VIRGINIA

KNOW ALL MEN BY THESE PRESENTS, that we, Armada Hoeffler Construction Company of
Virginia of Virginia Beach, VA (hereinafter called the "Principal"),
and the Fidelity and Deposit Company of Maryland, a corporation created and existing
under the laws of the State of Maryland and having its principal office in the
City of Baltimore, and authorized to transact business in the Commonwealth of
Virginia as Surety (hereinafter called the "Surety") are held and firmly bound unto the CITY OF
VIRGINIA BEACH (hereinafter called the "Owner") in the full and just sum of * Dollars
(\$11,037,000.00), lawful money of the United States of America, to be paid to the said "Owner",
its successors and assigns, to which payment well and truly to be made we bind ourselves, our heirs,
executors, administrators, successors, and assigns jointly and severally and firmly by these presents:

WHEREAS, the above bounden "Principal" has entered into a contract with the said "Owner", a
copy of said contract being attached hereto, for constructing or otherwise improving

Project: Design, Construction and outfitting of the Adoption-Friendly Animal Shelter

Located: Birchbeck Road, Virginia Beach, VA

upon certain terms and conditions in said contract more particularly mentioned; and

WHEREAS, it was one of the conditions of the award of the "Owner" pursuant to which said
contract was entered into, that these presents shall be executed;

NOW, THEREFORE, the condition of this obligation is such that if the above bounden "Principal" promptly pay all just claims for labor and material (including public utility services and reasonable rental of equipment when such equipment is actually used at the site) performed for or supplied to said "Principal" or any subcontractor in the prosecution of the work contracted for, then this obligation is to be void; otherwise, to be and remain in full force and virtue in law.

The "Surety" hereby waives notice of any alteration or extension of time made by the "Owner".

WITNESS, the signature of the "Principal" and the signature of the "Surety" by its Attorney-in-fact and its corporate seal duly attached by their Attorney-in-fact, herunto affixed this 12th day of July, in the year 2010.

Signed and sealed this 12th day of July, 2010.

PRINCIPAL

(CORPORATE SEAL)

Armada Hoffer Construction Company of Virginia

By John C. Davis
JOHN C. DAVIS



SURETY

Fidelity and Deposit Company of Maryland

COUNTERSIGNED: Resident Agent

1400 American Lane Tower 1 19th Fl

State of VIRGINIA

(Mailing Address)

Schaumburg IL 60196

By Jacqueline L. Joiner
Jacqueline L. Joiner

Phone No: 804-780-0611

By Jacqueline L. Joiner
Jacqueline L. Joiner

By Jacqueline L. Joiner

(CORPORATE SEAL)



ATTORNEY-IN-FACT

(This Bond shall be accompanied with Attorney-in-Fact's authority from Surety)

Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, does hereby nominate, constitute and appoint John C. STANCHINA, Jessica J. WINFREE, Kathleen M. MOORE, Hunter F. AVERY, Joann E. STAHR, Clinton J. DIERS, Jacqueline L. JOINER, Jeffrey M. JOHNSON, Paula FAIVRE and Susan ANDERSON, all of Richmond, Virginia, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, MD, in their own proper persons. This power of attorney revokes that issued on behalf of Thomas R. BROWN, John C. STANCHINA, Jessica J. WINFREE, Kathleen M. FERRIGNO, Hunter F. AVERY, Patricia L. LEWIS, Joann E. STAHR, Clinton J. DIERS, Jacqueline L. JOINER, Claudia M. CLARKSON, dated December 20, 2006.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 14th day of November, A.D. 2007.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gregory E. Murray

By:

Theodore G. Martinez

Gregory E. Murray Assistant Secretary

Theodore G. Martinez

State of Maryland } ss:
Baltimore County }

**FOR YOUR PROTECTION,
LOOK FOR THE ZURICH WATERMARK**

On this 14th day of November, A.D. 2007, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Dennis R. Hayden

Dennis R. Hayden

Notary Public

My Commission Expires: February 15, 2013

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,....and to affix the seal of the Company thereto."

CERTIFICATE

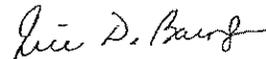
I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 12th day of July, 2010.



Assistant Secretary

City of Virginia Beach
Contractor Performance Evaluation

Section I – General Project Information – Must be completed in its entirety.

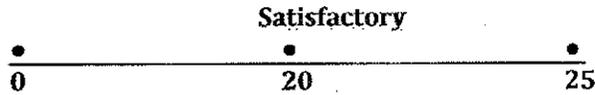
Name of Firm: Name of Prime: Name of Project Manager: Name of Superintendent(s):	Prime Phone: Project Manager Phone: Superintendent(s) Phone:
Project Manager Department/Title:	Date:
	Contract Cost Including Change Order: \$
	Initial Award: Change Order(s) Amt: Final Contract Amt:
Project Title & Number:	Contract Start/End Dates:
Description of Project: [Design] [Construction] [Other (specify _____)]	

Section II – Project Performance

Please rate this contractor's performance in each of the following areas. If you need additional space, attach additional sheets. If you rate the contractor below "satisfactory" in any area, please provide detailed information to explain the rating assigned. You are not restricted to using the numerical values (points) shown and may scale in between the points shown.

1. Quality of Workmanship/Project Management (0-25 points)

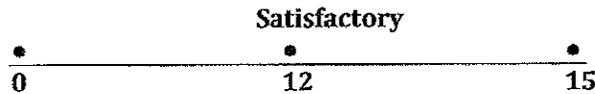
Rate the quality of this contractor's workmanship. Were there quality-related or workmanship problems? Was the contractor responsive to remedial work required? If so or if not, provide specific examples.



Score: _____

2. Scheduling (0-15 points)

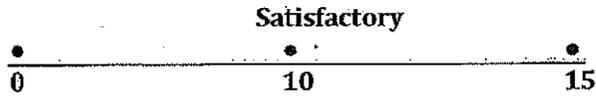
Rate this contractor's performance with regard to adhering to contract schedules. Did this contractor meet the contract schedule or the schedule as revised by approved change orders? If not, was the delay attributable to this contractor? If so, provide specific details/examples.



Score: _____

3. Woman and Minority Subcontractor Utilization (0-15 points)

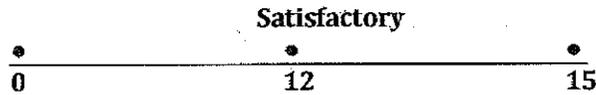
Rate this contractor's effort and success in utilizing woman and minority subcontractors. Did the contractor submit a credible plan? Did the contractor meet or exceed the plan?



Score: _____

4. Environmental Compliance (0-15 points)

Did the contractor comply with local, state and federal environmental standards, requirements, laws, statutes, regulations or the law of nuisance in the performance of this contract?



Score: _____

Section III: Legal and Administrative Proceedings

Are you aware of any legal or administrative proceedings, invoked bonds, assessed damages, liquidated damages, demands for direct payment, payment bond claims, contract failures, contract terminations or penalties involving this contractor on this contract? What is the status of any pending litigation? What was the final outcome of any completed litigation? What are the dollar amounts of assessed damages or penalties?

Comments:

Section IV: Evaluation Certification

I certify that the information contained in this evaluation form represents, to the best of my knowledge, a true analysis of this contractor's performance record on this contract.

I also certify that I have no ties with this contractor either through a business or family relationship.

I have mailed a copy of this completed evaluation form to the contractor on _____.

Enter Date

(Public Awarding Authorities must mail a copy of this completed evaluation form to the contractor.)

Signatures:

_____ Signature	_____ Name and Title of Inspector	_____ Date
_____ Signature	_____ Name of Project Manager	_____ Date
_____ Signature	_____ Division Manager	_____ Date
_____ Signature	_____ Department Director	_____ Date
_____ Signature	_____ Purchasing Agent or Designee	_____ Date