

PROJECT MANUAL
FOR
**UPPER NORTH RIVER NO. 77
HEARTHSTONE LAKE DAM
REHABILITATION**

IFB #81010-19-01



SEPTEMBER 15, 2018

AUGUSTA COUNTY FINANCE OFFICE
18 GOVERNMENT CENTER LANE
VERONA, VA 24482

SCHNABEL ENGINEERING, LLC
11-A OAK BRANCH DRIVE
GREENSBORO, NC 27407

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Augusta County, Virginia

Notice of Invitation for Bids - Fixed Completion Date

Issued Date: September 14, 2018

IFB #: 81010-19-01

Project Title: Upper North River No.77, Hearthstone Lake Dam Rehabilitation

Work Site: Upper North River No. 77, Hearthstone Lake Dam

Sealed Bids for this project will be received at the location stated below subject to the conditions cited herein until **2:00 p.m. local time on October 16, 2018**, for a Class A Contractor to furnish all labor and equipment necessary to complete the project known as Upper North River No. 77, Hearthstone Lake Dam Rehabilitation in Augusta County pursuant to the scope of work and specifications as specified.

Sealed Bids will be opened after 2:00 pm local time on October 16, 2018, in the Augusta County Finance Office at the address listed below. Bids must be marked on outside of packaging with the following:

IFB#81010-19-01
UPPER NORTH RIVER NO. 77 HEARTHSTONE DAM REHAB
DUE DATE: OCTOBER 16, 2018, 2:00PM.

Mandatory Contract Completion Date: 338 calendar days from the Notice to Proceed.

All potential Bidders are herein given notice that the County will be conducting a Mandatory Pre-Bid Conference at the work site on Thursday, September 27, 2018 at 10:00 a.m.

Directions to Work Site from I-81 North: Take I-81 North Exit 220 for VA-262/Woodrow Wilson Parkway toward US-11/Staunton. Continue about 6.5 miles on VA-262 and take the US-250/Churchville Avenue exit on the right. Turn left on to US-250/Churchville Avenue. Continue about 5.5 miles on US-250 and then turn right on to VA-42 North. Continue 5.3 miles on VA-42 North and then turn left on to VA-760/Bunker Hill Road. Keep left at the fork after 2.9 miles to continue on Bunker Hill Road. About 0.7 miles after the fork, turn left onto Freemason Run Road, which becomes Stokesville Road after 1.4 miles. Stay left after 1 more mile to stay on Stokesville Road then turn right on to Tillman Road after 1.4 miles. Continue an additional 1.6 miles on Tillman Road to arrive at Hearthstone Lake Dam. Bidders needing additional information about accessing the site should contact Corey Richie at 540-245-5741, ext 1.

Location to Submit Bids: Mrs. Corey S. Richie, VCO
Augusta County Finance Office
18 Government Center Lane
P.O. Box 590
Verona, VA 24482

Electronic copies of the Bid Package and attachments can be obtained by contacting Mr. Jonathan Pittman, PE with Schnabel Engineering at 336-274-9456 or jpittman@schnabel-eng.com. A secure link will be provided for downloading the documents.

All requests for additional information should be provided in writing by means of a Pre-Bid Question Form available from the Bid Officer. The Pre-Bid Question Form must be directed to the Bid Officer, Corey Richie, crichie@co.augusta.va.us, or 540-245-5741, ext. 1.

Augusta County, Virginia

Instructions to Bidders

The Invitation For Bids (IFB) consists of the Notice, this Instructions To Bidders, the Bid Form, the Pre-Bid Question Form, the proposed Construction Contract with General Conditions, the Special Provisions, the Special Conditions, the Scope of Work as described by the Plans and Specifications, other documents listed in the Specifications including any applicable forms to be used, and any addenda which may be issued, specifically including any report from a Pre-Bid Conference, all of which request qualified Bidders to submit competitive prices or bids for providing the described work on the project.

1. CONDITIONS AT SITE OR STRUCTURE:

Bidders shall visit the site and shall be responsible for ascertaining pertinent local conditions such as location, accessibility, general character of the Site, and the character and extent of existing improvements and Work within or adjacent to the Site . Claims resulting from failure to have done so will not be considered by the County.

2. EXPLANATIONS TO BIDDERS:

No oral explanation in regard to the meaning of drawings and specifications will be made, and no oral instructions will be given before the award of the contract. Discrepancies, omissions, or doubts as to the meaning of any IFB document, drawings, or specifications shall be communicated in writing to the designated Bid Officer for interpretation. Bidders should use the "Pre-Bid Question Form" provided in the bid documents. Bidders must so act to assure that questions reach the Bid Officer at least six (6) business days prior to the time set for the receipt of bids to allow a sufficient time for an addendum to reach them before the submission of their bids. Any interpretation made will be in the form of an addendum to the IFB which will be forwarded to all Bidders, and its receipt shall be acknowledged by the Bidder on the BidForm.

3. TIME FOR COMPLETION:

- (a) The Contract Completion Date will be designated by the County in the Notice to Proceed in one of the following manners:
 - (1) If the County specified a mandatory Contract Completion Date in the Invitation for Bid, the date designated in the Notice to Proceed will be no later than that date, or
 - (2) If a mandatory Contract Completion Date was absent from the Invitation for Bid, the Contract Completion Date designated in the Notice to Proceed will be determined through the bidding process taking into account the Contractor's proposed Time for Completion.
- (b) The Contract Completion Date is considered Final Completion. Unless otherwise specified, the Contractor shall achieve Substantial Completion at least thirty (30) days prior to Final Completion.
- (c) The Contractor, in preparing and submitting his bid, is required to take into consideration normal weather conditions. Normal weather does not mean statistically average weather, but rather means a range of weather conditions which might be anticipated (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available for the Augusta County area, including the U.S. Department of Commerce, Local Climatological Data Sheets, Oceanic and Atmospheric Administration/Environmental Data and Information Service, National Climatic Center, and the National Weather Service. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will only be considered by the County as indicated in the General Conditions.

4. PREPARATION AND SUBMISSION OF BIDS:

- (a) Bids shall be submitted on the forms furnished, or copies thereof, and shall be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures, alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the County as being incomplete or non-responsive.
- (b) Each bid must give the complete legal name and full business address of the Bidder and be signed by the Bidder, or the Bidder's authorized representative, with his usual signature. Bids by partnerships must be signed in the partnership name by one of the general partners of the partnership or an authorized representative, followed by the designation/title of the person signing, and a list of the partners. Bids by corporations must be signed with the legal name of the corporation followed by the name of the state in which it is incorporated and by the signature and title of the person authorized to bind it in this matter. The name of each person signing shall be typed or printed below the signature. A signature on a bid by a person who identified his title as "President," "Secretary," "Agent," or other designation without disclosing the principal firm, shall be held to be the bid of the individual signing. When requested by the County, satisfactory evidence of the authority of the officer signing on behalf of the corporation shall be furnished. Trade or fictitious names may be referenced by using "t/a _____," but bids shall be in the legal name of the person or entity submitting the bid.
- (c) Bids with the bid guarantee shall be enclosed in a sealed envelope which shall be marked and addressed as indicated by the advertisement. If a contract is for seventy thousand dollars (\$70,000) or more, or if the total value of all construction, removal, repair, or improvements undertaken by the bidder within any twelve-month period is five hundred thousand dollars (\$500,000) or more, the bidder is required under Title 54.1, Chapter 11, Code of Virginia (1950), as amended, to be licensed in Virginia as a "Class A Contractor." If a contract is for seven thousand five hundred dollars (\$7,500) or more, but less than seventy thousand dollars (\$70,000), the bidder is required to be licensed in Virginia as a "Class B Contractor." The bidder shall place on the outside of the envelope containing the bid and shall place in the bid over his signature whichever of the following notations is appropriate and insert his Contractor license/registration number:

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

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

- (d) The Board for Contractors has interpreted its regulations to mean "a licensed Contractor can bid on a contract which contains work outside his license classification(s) as long as he subcontracts those items for which he is not qualified to perform to licensed contractors with the appropriate License Classification and the work of the second party is incidental to the contract." Therefore, the County may, as a part of determining whether the Bidder is "responsible," require the apparent low Bidder to submit a listing of his subcontractors along with the license number and classification or specialty of each.
- (e) The bidder must also place its Employer Identification Number (SSN or EIN) in the space provided at the bottom of the Bid Form.

5. BID GUARANTEE:

- (a) All construction bids (including the Total Base Bid plus all Additive Bid items) shall be accompanied by a Bid Bond or Certified Check payable to the County as obligee in an amount equal to five percent (5%) of the amount of the bid. A Bid Bond must be issued by a surety company which is legally authorized by the Virginia State Corporation Commission to do fidelity and surety business in the Commonwealth of Virginia. Such Bid Bond shall guarantee that the bidder will not withdraw his bid during the period of sixty (60) days following the opening of bids; that if his bid is accepted, he will enter into a formal contract with the County in accordance with the Contract included as a part of the IFB Documents; that he will submit a properly executed and authorized Standard Performance Bond and Standard Labor and Material Payment Bond acceptable in form and content to the County; and that in the event of the withdrawal of said bid within said period, or failure to enter into said contract and give said bonds within ten (10) days after he has received notice of acceptance of his bid, the bidder shall be liable to the County for the difference between the amount specified in said bid and such larger amount of which the County may contract with another party to perform the work covered by said bid, up to the amount of the bid guarantee. This amount represents the damage to the County on account of the default of the bidder in any particular hereof. See Virginia Code § 2.2-4336.
- (b) See Virginia Code § 2.2-4338 for provisions allowing alternative forms of bid security in lieu of a Bid Bond.
- (c) The Bid Bonds or other bid security will be returned to all except the three lowest bidders after the formal opening of bids. The remaining Bid Bonds or bid security will be returned to the Bidders after the County and the accepted Bidder have executed the Contract and the Performance Bond and the Payment Bond have been approved by the County.
- (d) If the required Contract and bonds have not been executed within sixty (60) days after the date of the opening of the bids, then the Bid Bond or other bid security of any Bidder will be returned upon his request, provided he has not been notified of the acceptance of his bid prior to the date of such request.

6. MODIFICATION OF BIDS:

A bidder may withdraw or modify their bid provided that the designated officer or agency of the county has received written notice prior to the deadline fixed for bid receipt. The withdrawal or modification must be signed again by the authorized representative of the contractor making the modification or withdrawal. Written modification may be made by a revised sealed bid form, by writing on the envelope, or by a separate document. The modification should state specifically what is to be modified and by what amount or state the item to be modified and what the correct amount should be. **Unless otherwise specified by the Bidder, the modification will be applied to the TOTAL BASE BID amount shown on the Bid Form.** In order to maintain the integrity of the sealed bidding process, modifications should be phrased as increases or decreases in the total bid (e.g., minus \$5,000); they should not state a new total base bid. **The County will not accept bid withdrawals or modifications by telegram, facsimile, or email.**

7. RECEIPT OF BIDS:

- (a) Bids will be received at or before the date and the hour and at the place stipulated in the Invitation for Bids as may be modified by subsequent Addenda.
- (b) It is the responsibility of the Bidder to assure that his bid and any bid modifications are delivered to the place designated for receipt of bids by the date and hour (deadline) set for receipt of bids. Therefore, it is the Bidder's responsibility to take into account all factors which may impact on its bid deliverer/courier's ability to deliver the bid and to implement whatever actions are necessary

to have the bid delivered to the proper bid receipt location prior to the bid receipt deadline. No bids or bid modifications submitted or offered after the date and hour designated for receipt of bids will be accepted or considered. **Again, the County will not accept any bid, bid withdrawal, or bid modification by telegram, facsimile, or email.**

- (c) The Bid Officer is the County's representative designated to receive bids at the time and place noted in the IFB and to open the bids received at the appointed time.
- (d) **The official time used for the receipt of responses is determined by reference to the clock designated by the Bid Officer.** The Bid Officer shall determine when the Bid Receipt Deadline has arrived and shall announce that the Deadline has arrived and that no further bids or bid modifications will be accepted. All bids and bid modifications in the possession of the Bid Officer and his assistants at the time the announcement is completed are deemed to be timely, whether or not the bid envelope has been physically date/time stamped or otherwise marked by the time the Bid Officer makes the deadline announcement.

8. OPENING OF BIDS:

- (a) Bids will be opened at the time and place stated in the Invitation for Bid or as modified by subsequent Addenda, and their contents will be publicly announced. The Bid Officer shall decide when the specified time for bid opening has arrived. No responsibility will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified.
- (b) The provisions of § 2.2-4342 of the Code of Virginia (1950), as amended, shall be applicable to the inspections of bids received.

9. ERRORS IN BIDS:

- (a) A Bidder may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor, or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection or original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- (b) County policy requires that bidders for public construction contracts be given an opportunity to withdraw their bids due to error. The withdrawal procedure outlined below will be utilized:
 - (1) The Bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers, documents, and materials used in the preparation of the bid with such notice. The contract shall not be awarded until the two (2) working day period has lapsed.
 - (2) The delivery of a Bidder's original work papers, documents, and other materials used in preparation of the bid must be submitted either in person or by registered mail. The County will treat the materials as trade secrets or proprietary information subject to the conditions of subsection F of Virginia Code § 2.2-4342.
 - (3) No bid shall be withdrawn under this section when the result would be the awarding of the contract to another bid of the same Bidder or of another Bidder in which the ownership of the withdrawing bidder is more than five (5) percent.
 - (4) No Bidder who is permitted to withdraw a bid shall, for compensation, supply any material

or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

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

10. REJECTION OF BIDS:

The County reserves the right to cancel the Invitation for Bid and to reject all bids at its sole discretion when such rejection is in the interest of the County, or to reject the bid of any Bidder who is determined to be either not responsive or responsible. A statement justifying the decision to reject all bids will be placed in the procurement file.

11. DETERMINATION OF RESPONSIBILITY:

- (a) Each bidder shall be prepared, if so requested by the County, to present evidence of his experience, qualifications, and financial ability to carry out the terms of the Contract.
- (b) Prior to award of the Contract, an evaluation will be made to determine if the low Bidder has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been pre-qualified, if required. Factors to be evaluated include, but are not limited to:
 - (1) Sufficient financial ability to perform the contract as evidenced by the bidder's ability to obtain payment and performance bonds from an acceptable surety;
 - (2) Appropriate experience to perform the Work described in the bid documents;
 - (3) Any judgments entered against the bidder, or any officers, directors, partners, or owners for breach of a contract for construction;
 - (4) Any substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause where the substantial noncompliance is documented;
 - (5) A conviction of the bidder or any officer, director, partner, project manager, procurement manager, chief financial officer, or owner in the last five years of a crime relating to governmental or non-governmental construction or contracting; and
 - (6) Any current debarment of the contractor, any officer, director or owner, from bidding or contracting by any public body of any state, any state agency, or any agency of the federal government.
- (c) The County reserves the right to disqualify or refuse to accept the bid of any Bidder who has been convicted, or entered a plea of guilty or nolo contendere, in any federal or state court to any charge involving any unlawful, corrupt or collusive practice involving a public contract whether federal, state, or local, or who has been determined in any judicial proceeding to have violated any antitrust, bid-rigging, or collusive practice statute in connection with any public contract, or against whom such formal criminal prosecution or other judicial proceeding has been instituted.

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

12. AWARD OF CONTRACT:

- (a) **Basis for Contract Award:** The Contract, if awarded, will be awarded to the lowest responsive and responsible Bidder, if any, provided the bid is reasonable and it is in the best interest of the County to accept it and subject to the County's right to reject any and all bids and to waive informality in the bids and in the bidding. The Bid Form may contain a multi-part Base Bid and may contain Additive Bid Items. Determination of the lowest responsible Bidder, if any, will be based on the Total Base Bid Amount **entered on the Bid Form** including any properly submitted bid modifications plus as many Additive Bid Items taken in sequence as the County in its discretion chooses to award. **Where the sum of the values entered in the multiple parts do not agree with the Total Base Bid amount, the Total Base Bid amount entered on the bid form, including any properly submitted bid modifications, shall take precedence. Also, where there is a discrepancy between the total base bid in its written format and the total base bid in its numeric format, the written format shall prevail.**
- (b) **Informalities:** The County reserves the right to waive any informality in the bids when such waiver is in the interest of the County.
- (c) **Negotiation With Lowest Responsible Bidder:** If award of a contract to the lowest responsive and responsible Bidder is precluded because of limitations on available funds, under the provisions of Virginia Code § 2.2-4318 (the Public Procurement Act), the County reserves the right to negotiate the Total Base Bid amount with the lowest responsive, responsible Bidder to obtain a contract price within the available funds. This may involve changes in either the features or scope of the work included in the Base Bid. Such negotiations with the apparent low Bidder may include reducing the quantity, quality, or other cost saving mechanisms involving items in the Total Base Bid. Negotiations for Additive Bid Items are excluded. The County shall notify the lowest responsive and responsible Bidder that such a situation exists and the County and Bidder shall then conduct their negotiations in person, by mail, by telephone, or by any means they find convenient. If an acceptable contract can be negotiated, the changes to the Invitation for Bid documents agreed upon in the negotiations shall be summarized in a "Post Bid Modification" and included in the contract. If an acceptable contract cannot be negotiated, the County shall terminate negotiations and reject all bids.
- (d) **Notice of Award:** The Notice of Award, the Notice of Intent to Award, or the Notice of Decision to Award will be posted at the County's standard location for posting notices. In addition the County may also post such notice on the County's website.

13. ETHICS IN PUBLIC CONTRACTING:

The provisions, requirements and prohibitions as contained in § 2.2-4367 *et seq.* Code of Virginia (1950), as amended, pertaining to bidders, offerers, contractors, and subcontractors are applicable to this project.

14. PRE-BID CONFERENCE:

See the Notice of Invitation for Bid for requirements for a pre-bid conference and whether such conference is mandatory or optional.

A MANDATORY Pre-Bid Conference will be conducted Thursday, September 27, 2018 at 10:00a.m. at the worksite.

Augusta County, Virginia Bid Form

Project Title: Upper North River No. 77, Hearthstone Lake Dam Rehabilitation **ITB#** 81010-19-01

Qualification of Bidders:

Under Virginia law, all bidders must prove their eligibility to perform and / or satisfy the requirements of this contract before bidding. To this end, all bidders must be properly licensed or certified and shall have not been debarred.

License or Certificate Number: _____

Note: This should also appear on the outside of your sealed bid.

Bidders must also have the capability in all respects to fully satisfy all of the contractual requirements.

Years in Business:

Indicate the length of time your firm has been in business providing this type of construction:

_____ years _____ months.

References:

Indicate below a listing of at least three (3) recent references for whom you have provided this type of construction. Include the date service was furnished and the name and address of a person the Bid Officer has your permission to contact.

Date	Client	Telephone Number / Contact
_____	_____	() _____
	_____	_____

_____	_____	() _____
	_____	_____

_____	_____	() _____
	_____	_____

Bidder’s Proposal:

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with the County in the form included in the Invitation for Bid to perform all Work as specified or indicated for the prices and within the time indicated in this Bid, and in accordance with all the terms and conditions of the Invitation for Bid.

Bidder accepts all of the terms and conditions of the Invitation for Bid including the Instructions to Bidders. Specifically, the Bidder accepts without limitation those terms and conditions dealing with the disposition of the Bid Security. The Bid will remain subject to acceptance for sixty (60) days after the Bid opening, or for such longer period of time that the Bidder may agree to in writing upon request of the County.

Bidder’s Representations:

In submitting this Bid, Bidder represents, as set forth in the Invitation to Bid, that:

- A. Bidder has examined and carefully studied all documents contained in the Invitation for Bid and the following addenda, receipt of which is hereby acknowledged.

- B. Bidder 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. Bidder 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. Bidder has carefully studied all applicable explorations and tests including, but not limited to, subsurface and/or hazardous environmental conditions.
- E. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the price bid.
- F. Bidder is aware of the general nature of the Work to be performed by the County and others as it relates to the Bidder’s work.
- G. Bidder has given the County written notice of all conflicts, errors, ambiguities, or discrepancies that the Bidder has discovered in the Invitation for Bid and subsequent addendum, and the written resolution thereof by the County is acceptable.
- H. The Bidder certifies as follows (Applicable if the bid or offer exceeds \$100,000):
 - a. Any facility to be utilized in the performance of this proposed contract has not been listed on the Environmental Protection Agency (EPA) List of Violating Facilities.
 - b. The Bidder will promptly notify the County, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which they propose to use in the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities.
 - c. The Bidder will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.
- I. The Invitation for Bid and subsequent addendum are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization, or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over the County.

Bidder will complete the Work in accordance with the Contract Documents for the following, in accordance with the attached price schedule:

TOTAL BASE BID: (MUST BE IN NUMERIC AND WRITTEN FORMAT)

\$ _____ (NUMERIC)

_____ dollars (WRITTEN)

This blank is your definite bid. Failure to correctly complete this blank will not be considered an informality under any circumstances. **The written entry will take precedence over the numeric entry.**

TIME FOR FINAL COMPLETION (IN CALENDAR DAYS): 338 CALENDAR DAYS WITH A FIXED COMPLETION DATE

EARLIEST POSSIBLE START DATE: November 1, 2018

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all Unit Price Bid items will be based on actual quantities provided, determined as provided for in the Contract Documents.

Bidder accepts the provisions of the agreement as to liquidated damages in the event of failure to complete the work within the time specified.

Firm Name and Address:

_____ Telephone () _____

_____ Fax () _____

Signature: _____ Date: _____

Type/Print: _____

Title: _____ EIN#: _____

Email: _____

Augusta County, Virginia
Construction Contract
(INCLUDING GENERAL CONDITIONS)

Project Title: Upper North River No. 77, Hearthstone Lake Dam Rehabilitation ITB #: 81010-19-01

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

hereinafter referred to as "Contractor."

WITNESSETH:

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

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

- A. The Invitation for Bid and the Bid submitted.
- B. General Conditions.
- C. Special Provisions.
- D. Special Conditions.
- E. The Plans and Specifications.
- F. All modifications, including addenda and subsequent change orders.
- G. Any other documents expressly incorporated herein, or in any other construction
document.

2. Contractor's Obligations. The Contractor shall (A) furnish all of the materials and
perform all of the work in the Rehabilitation of Upper North River No. 77, Hearthstone Lake Dam,
hereinafter called the "Work," as more specifically defined in the attached General Conditions, in

accordance with the attached Plans and Specifications on the land designated as **UPPER NORTH RIVER NO. 77, HEARTHSTONE LAKE DAM** in Augusta County, Virginia; and (B) perform and observe all its other obligations under the Contract Documents.

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

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

WITNESS the following signatures and seals:

COUNTY OF AUGUSTA, VIRGINIA

By: TIMOTHY K. FITZGERALD, COUNTY ADM.

(SEAL)

ATTEST: _____

Contractor

By: _____

(SEAL)

ATTEST: _____

Construction Contract

General Conditions

1. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If the County and the Contractor agree in writing that Notices transmitted by Facsimile (Fax) or Email are acceptable for the Project, such Notice shall be transmitted to the Fax number or Email address listed in the agreement and, in the case of Fax, shall have a designated space for the Fax Notice recipient to acknowledge his receipt by authorized signature and date. The Fax Notice with authorized signature acknowledging receipt shall be Faxed back to the sender. The Faxed Notice shall be effective on the date it is acknowledged by authorized signature. Emailed notices shall be acknowledged by Reply Email upon receipt. All Faxed and Emailed Notices shall also be sent by hard copy, which shall be effective upon delivery, as provided herein. Notice shall be effective upon the date of acknowledgment of the Faxed or the Emailed Notice or the date of delivery, whichever occurs first.

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

Owner: Augusta County, Virginia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. CONTRACT DOCUMENTS.

- (a) Original copies. The Contract between County and Contractor shall be signed by the County and the Contractor in as many original counterparts as may be mutually agreed upon, each of which shall be considered an original.
- (b) Time of the essence. All time limits stated in the Contract Documents, including but not limited to the Time for Completion of the Work, are of the essence of the Contract.
- (c) Severability clause. If any provision of this Contract shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision.
- (d) Conflicting clauses. In the event there is a conflict between the provisions of the General Conditions and Supplemental Conditions, the provisions of the Supplemental Conditions shall apply. A specific provision in any other Contract Document shall take precedence over a provision of the General Conditions unless such precedence would result in a violation of law.

3. LAWS AND REGULATIONS.

- (a) The Contractor shall comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work and shall give all notices required thereby.
- (b) The Contractor shall assure that all Subcontractors and tradesmen who perform Work on the project are properly licensed by the Department of Professional and Occupational Regulation as required by the Code of Virginia and applicable regulations.
- (c) If the Contractor violates laws or regulations that govern the Project, the Contractor shall indemnify and hold the County harmless against any fines and/or penalties that result from such violation. To the extent that such violation is the result of negligence or other actionable conduct of the Contractor, the Contractor shall indemnify and hold the County harmless against any third party claims, suits, awards, actions, causes of action or judgments, including but not limited to attorney's fees and costs incurred thereunder, that result from such violation.

4. NONDISCRIMINATION.

- (a) During the performance of this Contract, the Contractor agrees as follows:
 - i. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - ii. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - iv. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over ten thousand dollars (\$10,000), so that the provisions will be binding upon each Subcontractor or vendor.
- (b) Where applicable, laws protecting the rights of the disabled, including the Virginians with Disabilities Act and the federal Americans with Disabilities Act, shall apply to the Contractor and all Subcontractors.

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

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

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

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

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

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

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

5. PROHIBITION OF ALCOHOL AND OTHER DRUGS.

(a) During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

(b) The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all Contractor, Subcontractor and Supplier personnel at the Site: (1) the manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of

prescription drugs; and (2) the impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

6. CONTRACT COMPLETION DATE AND TIME FOR COMPLETION.

(a) The Contract Completion Date will be designated by the County in the Notice to Proceed.

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

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

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

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

(f) Late Completion of Project: In the event the Contractor wishes to modify the Contract Completion Date, he must comply with Section 43: Damages for Delay; Extensions of Time.

7. CONDITIONS AT SITE.

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

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

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

8. CONTRACT SECURITY.

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

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

9. SUBCONTRACTS.

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

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

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

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

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

10. SEPARATE CONTRACTS.

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

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

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

11. INDEMNIFICATION.

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

12. CONTRACTOR'S AND SUBCONTRACTOR'S INSURANCE.

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

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

(c) During the performance of the Work under this Contract, the Contractor shall maintain commercial general liability insurance to include Premises / Operations Liability, Products and Completed Operations Coverage,

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

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

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

13. TAXES, FEES AND ASSESSMENTS.

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

14. PATENTS.

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

“[Section 15 Omitted.]”

16. INSPECTION.

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

17. SUPERINTENDENCE BY CONTRACTOR.

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

(b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the County or the County's separate contractors and their subcontractors.

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

18. CONSTRUCTION SUPERVISION, METHODS AND PROCEDURES.

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

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

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

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

19. SCHEDULE OF THE WORK.

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

(b) Within fifteen (15) days after the Contractor signs the Contract between County and Contractor, unless waived by the County or otherwise provided in the Supplemental Conditions, the Contractor shall prepare and submit to the County a preliminary schedule for accomplishing the Work as contractually agreed. The preliminary schedule shall be in sufficient detail to show the sequencing of the various trades involved in the Work. The County will notify the Contractor of its acceptance of or objections to the preliminary schedule within fifteen (15) days of receipt by the County. A final Project schedule for accomplishing the Work must be submitted in like manner prior to the Notice to Proceed or at such other time as may be agreed by the County.

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

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

“[SECTION 20 - OMITTED].”

21. ACCESS TO WORK.

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

22. SURVEYS AND LAYOUT.

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

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

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

23. PLANS AND SPECIFICATIONS.

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

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

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

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

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

24. SUBMITTALS.

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

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

(c) The Contractor shall furnish to the County's Representative for approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the Work. When Submittals are required by this Contract for materials, the Contractor shall furnish full information concerning the material or articles which he contemplates incorporating in the Work. When required, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval shall be at the risk of subsequent rejection.

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

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

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

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

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

25. FEES, SERVICES AND FACILITIES.

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

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

26. EQUALS.

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

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

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

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

27. AVAILABILITY OF MATERIALS.

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

28. CONTRACTOR'S TITLE TO MATERIALS.

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

29. STANDARDS FOR MATERIALS INSTALLATION & WORKMANSHIP.

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

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

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

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

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

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

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

30. WARRANTY OF MATERIALS AND WORKMANSHIP.

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

(b) Work not conforming to these warranties shall be considered defective. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in the Contract or under Virginia law.

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

31. USE OF SITE AND REMOVAL OF DEBRIS.

(a) The Contractor shall:

- (1) Perform the Work in such a manner as not to interrupt or interfere with the operation of any existing activity on, or in proximity to, the Site or with the Work of any other separate contractor;
- (2) Store his apparatus, materials, supplies, and equipment in such orderly fashion at the Site of the Work as will not unduly interfere with the progress of his Work or the work of any other separate contractor; and
- (3) Place upon the Work or any part thereof only such loads as are consistent with the safety of that portion of the Work.

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

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

(d) The Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment or such prior time as the County may require, to remove all surplus material, false Work, temporary structures, including foundations thereof, plants of any description and debris of every nature resulting from his operations and to put the Site in a neat, orderly condition; to thoroughly clean and leave reasonably dust free all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the Contract; and to clean thoroughly all glass installed under the Contract, including the removal of all paint and mortar splatters and other defacements. If the Contractor fails to clean up at the time required herein, the County may do so and charge the costs incurred thereby to the Contractor.

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

32. TEMPORARY ROADS.

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

33. SIGNS.

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

34. PROTECTION OF PERSONS AND PROPERTY.

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

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

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

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

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

35. CLIMATIC CONDITIONS.

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

36. PAYMENTS TO CONTRACTOR.

(a) When evaluating the Contractor's Request for Payment, the County will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work on the critical path with regard to the Time for Completion, and the estimated value of the Work necessary to achieve Final Completion. The County will schedule a monthly pay meeting to occur no earlier than the 25th day of the month represented by the payment request or not later than the 5th day of the following month. The Contractor will submit his monthly estimate of Work completed on the Form provided for that purpose by the County so that it is received by the County and the County's Project Manager at least one work day prior to the date scheduled by the County for the monthly pay meeting. The County will review the estimate with the County and the Contractor at the monthly pay meeting, which shall be considered the receipt date, and may approve any or all of the estimate of Work for payment. In preparing estimates, the material delivered to the Site and preparatory Work done shall be taken into consideration, if properly documented as required by the Specifications, or as may be required by the County so that quantities may be verified. In addition to material delivered to the Site, material such as large pieces of equipment and items purchased specifically for the Project, but stored off the Site in or near Augusta County, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested:

(1) The Contractor must notify the County in writing, at least ten (10) days prior to the submission of the payment request, through the County, that specific items will be stored off Site in a designated, secured place in or near Augusta County. The Schedule of Values must be detailed to indicate separately both the value of the material and the labor/installation for trades requesting payment for stored materials. By giving such notification and by requesting payment for material stored off Site, the Contractor warrants that the storage location is safe and suitable for the type of material stored and that the materials are identified as being the property of the Contractor, and agrees that loss of materials stored off the Site shall not relieve the Contractor of the obligation to timely furnish these types and quantities of materials for the Project and meet the Time for Completion or Contract Completion Date, subject to Section 43 of these General Conditions. If the storage location is more than 20 miles from the Site, the Contractor may be required to reimburse the County for the cost incurred for travel to the storage location to verify the Contractor's request for payment for materials stored off Site.

(2) Such notification, as well as the payment request, shall:

- (a) Itemize the quantity of such materials and document with invoices showing the cost of said materials;
- (b) Indicate the identification markings used on the materials, which shall clearly reference the materials to the particular project;
- (c) Identify the specific location of the materials, which must be within reasonable proximity to the Site;
- (d) Include a letter from the Contractor's Surety which confirms that the Surety on the Performance Bond and the Labor and Material Payment Bond has been notified of the request for payment of materials stored off the Site and agrees that the materials are covered by the bond; and
- (e) Include a certificate of all-risk builder's risk insurance in an amount not less than the fair market value of the materials, which shall name the County and the Contractor as co-insureds.

(3) Submittals for such materials have been reviewed and meet the requirements of the Contract Documents, that the stored materials meet the requirement of the plans and specifications, and that such materials conform to the approved Submittals. Should the County deem it necessary to visit the storage site to make such review, the Contractor shall bear the costs incurred therewith.

(4) The County shall notify the Contractor in writing of its agreement to prepayment for materials.

(5) The Contractor shall notify the County in writing when the materials are to be transferred to the Site and when the materials are received at the Site.

(b) Payment will not be made for materials or equipment stored on or off the Site which are not scheduled for incorporation into the Work within the six months next following submission of the request for payment, unless the Contractor has the prior consent of the County, which consent may be granted or withheld by the County in its discretion if, in the opinion of the County, it is not necessary to procure the materials more than six months in advance of use to assure their availability when needed.

(c) No payment shall be made to the Contractor until the Contractor furnishes to the County its Social Security Number (SSN) if an individual, or its Federal Employer Identification Number (FEIN) if a proprietorship, partnership, corporation or other legal entity. No payment shall be made to the Contractor until Certificates of Insurance or other satisfactory evidence of compliance by the Contractor with all the requirements of Section 12 of these General Conditions have been delivered to the County. Further, no payments on the basis of Work performed by a Subcontractor shall be paid by the County until copies of any certificates of insurance required of the Subcontractor under Section 12 have been delivered to the County.

(d) In making such partial payments, five percent (5%) of each payment to the Contractor shall be retained until Final Completion and acceptance of all Work covered by the Contract, unless otherwise provided by any law, regulation, or program of the federal government. Such retainage shall be held to assure faithful performance of the Contract and may also be used as a fund to deduct amounts due to or claimed by the County, including, but not limited to, payment to the County of all moneys due for deductive change orders, credits, uncorrected Defective Work, interest, damages, and the like (§2.2-4333 of the Code of Virginia).

(e) All material and Work for which partial payments are made shall thereupon become the sole property of the County, but this provision shall not relieve the Contractor from the sole responsibility for all materials and Work, including those for which payment has been made, or for the restoration of any damaged materials or Work. Nor shall this provision serve as a waiver of the right of the County to require the fulfillment of all of the terms and conditions of the Contract.

(f) The final payment, which shall include the retainage, less any amounts due to or claimed by the County, shall not become due until the County agree that Final Completion has been achieved and until the Contractor shall deliver to the County a Certificate of Completion by the Contractor and an Affidavit of Payment of Claims, stating that all Subcontractors and Suppliers of either labor or materials have been paid all sums claimed by them for Work performed or materials furnished in connection with this Project less retainage. Amounts due the County which may be withheld from the final payment may include, but are not limited to, amounts due pursuant to Section 3(c), Section 16(a)-(d), Section 31(d), costs incurred to repair or replace Defective Work, costs incurred as a result of the Contractor's negligent acts or omissions or omissions of those for whom the Contractor is responsible, delay damages under Section 43, and any liquidated or actual damages. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, the Contractor shall list each to which an agreed amount of money is due or which has a claim in dispute. With respect to all such Subcontractors and Suppliers, the Contractor shall provide to the County, along with the Affidavit of Payment of Claims, an affidavit from each such Subcontractor and Supplier stating the amount of their subcontract or supply contract, the percentage of completion, the amounts paid to them by the Contractor and the dates of payment, the amount of money still due if any, any interest due the Subcontractor or Supplier pursuant to Section 37(c) below, and whether satisfactory arrangements have been made for the payment of said amounts. If no agreement can be reached between the Contractor and one or more Subcontractors or Suppliers as to the amounts owed to the Subcontractors or Suppliers, the County may, in its discretion, pay such portion of the moneys due to the Contractor which is claimed by the Subcontractor or Supplier into a Virginia Court or Federal Court sitting in Virginia, in the manner provided by law. Said payment into court shall be deemed a payment to the Contractor. Nothing in this Section shall be construed as creating any obligation or contractual relationship between the County and any Subcontractor or Supplier, and the County shall not be liable to

any Subcontractor or Supplier on account of any failure or delay of the County in complying with the terms hereof.

(g) Upon successful completion of the final inspection and all Work required by the Contract, including but not limited to the delivery of As-Built Drawings, equipment manuals, written warranties, acceptance of the Work by the County, and the delivery of the affidavits required in Section 36(f) of these General Conditions, the County shall deliver the written Certificate of Completion to the County, with a copy to the Contractor, stating the entire amount of Work performed and compensation earned by the Contractor, including extra work and compensation therefor. The County may accept the Work for occupancy or use while asserting claims against the Contractor; disputing the amount of compensation due to the Contractor; disputing the quality of the Work, its completion, or its compliance with the Contract Documents; or any other reason.

(h) Unless there is a dispute about the compensation due to the Contractor, Defective Work, quality of the Work, compliance with the Contract Documents, completion itself, claims by the County, other matters in contention between the parties, or unless monies are withheld pursuant to the Comptroller's Debt Setoff Program, within thirty (30) days after receipt and acceptance of the Schedule of Values and Certificate for Payment in proper form by the County at the monthly pay meeting, which shall be considered the receipt date, the County shall pay to the Contractor the amount approved, less all prior payments and advances whatsoever to or for the account of the Contractor. In the case of final payment, the completed Affidavit of Payment of Claims, the Certificate of Completion by the Contractor and the Certificate of Completion by the County shall accompany the final Schedule of Values and Certificate for Payment which is forwarded to the County for payment. The date on which payment is due shall be referred to as the Payment Date. In the event of disputes, payment shall be mailed on or before the Payment Date for amounts and Work not in dispute, subject to any set offs claimed by the County; provided, however in instances where further appropriations are required by the General Assembly or where the issuance of further bonds is required, in which case, payment shall be made within thirty (30) days after the effective date of such appropriation or within thirty (30) days after the receipt of bond proceeds by the County. All prior estimates and payments including those relating to extra Work may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any request for payment by the Contractor contains a defect or impropriety, the County shall notify the Contractor of any defect or impropriety which would prevent payment by the Payment Date, within five (5) days after receipt of the Schedule of Values and Certificate for Payment from the County.

(i) Interest shall accrue on all amounts owed by the County to the Contractor which remain unpaid seven (7) days following the Payment Date. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in the publication entitled The Wall Street Journal on the weekday following each such Weekly Auction. During the period of time when the amounts due to the Contractor remain unpaid following the seventh (7) day after the Payment Date, the interest accruing shall fluctuate on a weekly basis and shall be that established by the immediately prior Weekly Auction. It shall be the responsibility of the Contractor to gather and substantiate the applicable weekly interest rates to the satisfaction of the County and to calculate to the satisfaction of the County the interest due. In no event shall the rate of interest charge exceed the rate of interest charged pursuant to § 58.1-1812 of the Code of Virginia. No interest shall accrue on retainage or when payment is delayed because of disagreement between the County and the Contractor regarding the quantity, quality or timeliness of the Work, including, but not limited to, compliance with Contract Documents or the accuracy of any Request for Payment received. This exception to the accrual of interest stated in the preceding sentence shall apply only to that portion of a delayed payment which is actually the subject of such a disagreement and shall apply only for the duration of such disagreement. Nothing contained herein shall be interpreted, however, to prevent the withholding of retainage to assure faithful performance of the Contract. These same provisions relating to payment of interest to the Contractor shall apply also to the computation and accrual of interest on any amounts due from the Contractor to the County for deductive change orders and to amounts due on any claims by the County. The date of mailing of any payment by the U.S. Mail is deemed to be the date of payment to the addressee.

(j) The acceptance by the Contractor of the final payment shall be and operate as a release to the County of all claims by the Contractor, its Subcontractors and Suppliers, and of all liability to the Contractor whatever, including liability for all things done or furnished in connection with this Work, except for things done or furnished which are the subject of unresolved claims for which the Contractor has filed a timely written notice of intent, provided a claim is

submitted no later than sixty (60) days after final payment. Acceptance of any interest payment by the Contractor shall be a release of the County from claims by the Contractor for late payment.

(k) No certificate for payment issued by the County, and no payment, final or otherwise, no certificate of completion, nor partial or entire use or occupancy of the Work by the County, shall be an acceptance of any Work or materials not in accordance with the Contract, nor shall the same relieve the Contractor of responsibility for faulty materials or Defective Work or operate to release the Contractor or his Surety from any obligation under the Contract, the Standard Performance Bond and the Standard Labor and Material Payment Bond.

37. PAYMENTS BY CONTRACTOR

Under Virginia Code § 2.2-4354:

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

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

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

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

(c) The Contractor is obligated to pay interest to a subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the County for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision a.

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

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

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

38. CHANGES IN THE WORK.

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

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

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

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

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

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

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

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

39. EXTRAS.

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

“[Section 40 Omitted.]”

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

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

(b) Prior to termination of the Contract, the County shall give the Contractor and his surety ten (10) days written notice pursuant to Section 1 ("Notice") of these General Conditions, during which the Contractor and/or his surety may rectify the basis for the notice. If rectified to the satisfaction of the County within said ten (10) days, the County may rescind its notice of termination. If not, the termination for cause shall become effective at the end of the ten

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

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

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

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

42. TERMINATION BY COUNTY FOR CONVENIENCE.

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

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

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

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

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

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

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

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

- (a) cost of work performed or supplies delivered;
- (b) the costs of settling and paying any reasonable claims to subcontractors and
- (c) suppliers; and a mark-up of ten percent (10%) for profit and overhead.

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

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

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

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

43. DAMAGES FOR DELAYS; EXTENSION OF TIME

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

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

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

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

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

(f) If there is an extension in the Time for Completion or the Contract Completion Date and if the Contractor is entitled to additional compensation for the delay, and where there is no change in the Work, an itemized accounting of the following direct Site overhead expenses will be considered as allowable costs to be used in determining the compensation due the Contractor: Site superintendent pro rata salary, temporary Site office expense, temporary Site facilities, and temporary Site utilities including basic telephone service, electricity, heat, water, and sanitary/toilets. A fifteen percent (15%) markup of these expenses will be allowed to compensate the Contractor for home office and other direct or indirect overhead expenses.

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

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

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

(j) If the Contractor fails to complete the Work by the Time for Completion or Contract Completion Date, the following provisions apply:

(1) The Contractor shall owe to the County, not as a penalty but as liquidated damages, the sum stated in subsection (j) below as “step one” liquidated damages for each and every partial or total calendar day of delay in Substantial Completion.

(2) Once the Work is substantially complete, the accrual of “step one” liquidated damages shall cease, and the Contractor shall have thirty (30) calendar days in which to achieve Final Completion of the Work.

(3) If Final Completion of the Work is not achieved on or before the thirtieth (30th) calendar day after Substantial Completion, and if the County has not granted any extension of time, the Contractor shall owe to the County, not as a penalty but as liquidated damages, the sum stated in subsection (j) below as “step two” liquidated damages for each and every partial or total calendar day of delay in Final Completion.

(k) Time is of the essence of the contract. Should the Contractor fail to complete the Work within the time agreed upon in the Contract or within such extra time as may have been allowed by Change order, there may be deducted from any sums due or that may become due the Contractor the sum set forth in the following schedule for each and every calendar day, exclusive of Sundays and legal holidays, that the Work shall remain uncompleted. This sum shall be considered and treated not as a penalty but as liquidated damages due the County from the Contractor by reason of inconvenience to the public, added cost of engineering and supervision, operation of alternative public services, and other factors which have caused the expenditure of public funds resulting from the contractor’s failure to complete the work within the time specified in the contract.

Schedule of Liquidated Damages

Step One	\$1,000.00 per day
Step Two	\$1,000.00 per day

(l) Each party hereby waives any claim or defense as to the validity of any liquidated damages stated in this Agreement as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damage.

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

44. INSPECTION FOR SUBSTANTIAL COMPLETION & FINAL COMPLETION

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

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

Contractor shall provide the County another Certificate of Partial or Substantial Completion notifying the County of the date when, in his opinion, the listed items of unfinished Work or Defective Work will be substantially complete and ready for inspection.

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

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

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

“[Section 45 Omitted.]”

46. ASSIGNMENTS.

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

47. CONTRACTUAL DISPUTES.

Under Virginia Code § 2.2-4363:

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

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

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

“[Section 48 Omitted.]”

49. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT.

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

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

50. PROJECT MEETINGS.

The intention of this section is to enable the County and the Contractor to have a timely exchange of information and to accomplish the Work in a cooperative manner as required by the Contract Documents. The Contractor is responsible for managing the Work, obtaining approvals and requesting clarifications on a timely, reasonable basis. The County is responsible for making a reasonable effort to provide timely responses to the Contractor.

Pre-Construction Meeting:

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

- (1) Persons involved from each entity and their chain of authority including the names of persons authorized to sign Change Orders and any limits to their authority.
- (2) Names, addresses, telephone numbers and FAX numbers to be used for requests for information or clarification, requests for Change Orders, and distribution of shop drawings, Submittals, and notices.
- (3) Contractor's proposed construction schedule and County's sequencing requirements, if any.
- (4) Procedures for submission of shop drawings, product data and other Submittals, if any.
- (5) Procedures for handling Field Orders and Change Orders, if any.
- (6) Procedures for Contractor's request for time extension, if any.
- (7) Construction Site requirements, procedures, and clarifications to the manner of conducting the Work Site specialties, including: dust control, erosion control, stormwater management, project signs, clean up and housekeeping, temporary facilities, utilities, security, traffic, and safety layout.
- (8) Quality control, testing, inspections, notices required, the tentative schedule of Site visits by the County's Representative and others, and any proposed changes to the Project Inspector's duties
- (9) Creation, maintenance, and distribution of project records.

(10) Procedures for submission of Requests for Payment.

Project Meetings and Progress Reports:

(b) Attendance at Project Meetings: Unless stated otherwise in the Special Conditions, project meetings will be scheduled every other week. Invitees to all project meetings shall include representatives from the Contractor and the County. When appropriate, representatives of Subcontractors should also be present. Under no circumstances shall project meetings be considered a reason for extensions of time or damages for delay.

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

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

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

- (1) The Contractor's progress report(s) indicates delays that are, in the opinion of the County, of sufficient magnitude that the Contractor's ability to complete the Work on time is brought into question;
- (2) The Contractor's progress report(s) indicates delays that are, in the opinion of the County, of sufficient magnitude to put the Contractor thirty (30) or more days behind at any time during construction.
- (3) The Contractor desires to make changes in the sequencing of Work or the planned duration of future activities which, in the opinion of the County, are of a major nature.

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

Special Provisions

1. Non-Compliance with Contract Requirements

(a) The County may order suspension of the Work in whole or in part for such time as he deems necessary because of the failure of the Contractor to comply with any of the requirements of this Contract, and the Contract completion date shall not be extended on account of any such suspension of the Work.

(b) When the County orders any suspension of the Work under (a) of this clause, the Contractor shall not be entitled to any costs or damages resulting from such suspension.

(c) The rights and remedies of the County provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

2. Quantity Variations

(a) Where the quantity of Work shown for an item in the bid schedule, including any modification thereof, is estimated, no adjustment of the contract price nor or the performance time shall be made for overruns or underruns which are within twenty-five percent (25%) of the estimated quantity of any such item.

(b) For overruns of more than twenty-five percent (25%), the County shall re-estimate the quantity for the item, establish an equitable contract price for the overrun of more than 25 percent, adjust contract performance time equitably and modify the contract in writing accordingly; this clause to thereafter be applicable to the total re-estimated item quantity.

(c) For underruns of more than twenty-five percent (25%), the County shall determine the quantity for the item, establish an equitable contract price therefor, adjust contract performance time equitably, and modify the contract in writing accordingly.

3. Accident Prevention and Safety Measures

The Contractor shall comply with the OSHA Part 1926, Construction Standards and Interpretations, in effect on the date of issuance of the invitation for bids, and with the NRCS supplement to OSHA PART 1926.

4. Performance of Work by Contractor

The Contractor shall perform on the Site, and with his own organization, work equivalent to at least twenty percent (20%) of the total amount of Work to be performed under the Contract. If, during the progress of the Work hereunder, the Contractor requests a reduction in such percentage, and the County determines that it would be to the advantage of the contracting local organization, the percentage of the Work required to be performed by the Contractor may be reduced with the written approval of the county.

5. Clean Air and Water Clause

(a) This is applicable only if the Contract exceeds \$100,000, or the county has determined that orders under an indefinite quantity contract in any one year will exceed \$100,000, or a facility to be used has

been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by the Environmental Protection Agency (EPA), or the Contract is not otherwise exempt.

(b) The Contractor agrees as follows:

- (1) To comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. 1857, et seq, as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.
- (2) That no portion of the work required by this contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.
- (3) To use his best efforts to comply with clean air and clean water standards at the facilities in which the Contract is being performed.
- (4) To insert the substance of the provisions of this clause in any nonexempt subcontract, including this subparagraph.

(c) The terms used in this clause have the following meanings:

- (1) The term "Air Act" means the Clean Air Act, (42 U.S.C. 1857 et seq, as amended by Public Law 91-604).
- (2) The term "Water Act" means Federal Water Pollution Control Act (33 U.S.C. 1251 et seq, as amended by Public Law 92-500).
- (3) The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in Section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act, or an approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c- 7(d)).
- (4) The term "Clean Water Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the EPA or by a state under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

- (5) The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the EPA or an air or water pollution control agency in accordance with the Air Act or Water Act and regulations issued pursuant thereto.
- (6) The term "Facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned, leased or supervised by a contractor, or subcontractor, to be utilized in the performance of the Contract or a subcontract. Where a location or site of operations contains or includes more than one building, plant, installation or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

6. Work Week:

The maximum work week allowed is 10 hours a day, Monday through Saturday. All Sundays, New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day, are non-work days. No work, except that of an emergency nature, will be allowed on non-work days.

7. Equal Employment Opportunity Reporting Requirements:

Equal Employment Opportunity reporting requirements for contracts over \$10,000:

(a) EEO-1 Reporting Requirements

- (1) Each construction prime contractor and first tier subcontractor who has 50 or more employees on total corporate or company payroll and signs a direct federal or financially assisted contract or subcontract amounting to \$50,000 or more, shall file reports on Standard Form 100 (EEO-1) to the Joint Reporting Committee.
- (2) Each contractor or subcontractor required in paragraph 1 above shall submit an EEO-1 to the U.S. Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs, 230 South Dearborn St., Ste. 570, Chicago, Illinois 60604, WITHIN 30 DAYS after award of such contract or subcontract as mentioned in paragraph 1 above, UNLESS such contractor or subcontractor has already submitted an EEO-1 report to the Joint Reporting Committee within 12 months preceding the date of award of an NRCS federal or federally-assisted contract.

(b) Contractors and subcontractors may obtain EEO-1 reporting forms by writing to:

U.S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Program
230 Dearborn St., Ste. 570
Chicago, Illinois 60604

Special Conditions

1. Emergency Action Plan (EAP)

- A. The Contractor shall participate in the current Emergency Action Plan (EAP) titled Emergency Action Plan for Upper North River #77 COVERING THE TIME PERIOD DURING DAM REHABILITATION and shall maintain at the Site one copy of the EAP. The Contractor shall make the EAP an integral part of his safety plan by providing all information and efforts as required by the EAP. The current EAP is included as Attachment 4 to the Project Manual.
- B. The Contractor shall attend and participate in a coordination meeting prior to commencement of construction with the County, County's Representative, NRCS, and County Emergency Services to discuss the EAP and the roles and functions of each party.
- C. The Contractor shall provide staffing as necessary during rainfall events exceeding 2 inches in 6 hours to monitor reservoir water elevations and activate the EAP as required.

2. Auxiliary Spillway Requirements

The Contractor shall minimize constriction of the auxiliary spillway flow area throughout construction operations. A minimum unobstructed width of 100 feet shall be maintained at all times for potential auxiliary spillway flows during storm events. The Contractor shall also take measures to minimize erosion of the auxiliary spillway during these flow events.

3. Site Access and Security

The USFS has issued a closure order for the portion of Tillman Road within the project limits as described in the Project Specifications. The Contractor shall properly post the required Forest Supervisor's Order and provide a sign stating that the area is closed to the public and access is denied.

The Contractor shall maintain existing access gates and install temporary construction access gates as shown on the Drawings. All gates shall be locked during non-working hours. The Contractor shall provide locks to be placed on the gates and provide 4 additional keys to the County for use by Project Inspectors.

4. Construction Schedule and Sequencing for Critical Dam Safety Activities

Requirements for preparation and submission of the Construction Schedule are included under Item 19 of the General Conditions, Schedule of the Work. The Contractor shall consider how potential adverse weather conditions may impact sequencing and scheduling of the Work. If excavation of the embankment and toe drain or construction of other critical dam safety components are proposed to occur over the winter months, the Contractor shall submit a detailed narrative with the Construction Schedule indicating how they will protect and minimize exposure of the excavated

embankment section(s) or other dam component(s) to short-term and long-term adverse weather conditions. Extended exposure of critical excavations and other work-in-progress will not be permitted.

5. USACE Permit

The U.S. Army Corps of Engineers (USACE) has issued a Nationwide Permit #3 for this project. Standard permit conditions shall apply. A copy of the USACE Nationwide Permit #3 is included as Attachment 3.

6. USFS Permits

The Contractor shall obtain a Road Use Permit issued by the U.S. Forest Service (USFS). The Contractor shall be responsible for adhering to the permit requirements for road protection, maintenance, restoration, and other related items. Contact Mary Yonce with the North River Ranger District at (540) 984-4101 for more information about the Road Use Permit requirements.

7. Land Disturbance and Stormwater Permits

The Contractor shall be responsible for obtaining the land disturbance permit from Augusta County and paying the applicable permit fees. The Contractor shall also obtain permit coverage under the Virginia Stormwater Management Program (VSMP), pay the applicable permit fees, and maintain the Stormwater Pollution Prevention Plan (SWPPP) during construction. Contact Doug Wolfe with Augusta County at (540) 245-5700 for additional information.

8. USFS Timber Removal

The USFS has issued a permit for the removal of the timber as required within the limits of work. No additional timber shall be removed unless specifically identified, inventoried, and permitted by the USFS. The Contractor shall be responsible for obtaining any additional USFS permits for timber removal.

9. Photo Documentation

- A. Construction photographs shall be digital, and shall include a list indicating the date, name of project, and a brief description of the image(s), including the location and direction the images were taken. Digital copies of all documentations shall be provided to the County's Representative on a CD or DVD.
- B. Pre-Construction Photographs and/or Video
 1. The Contractor shall provide to the County's Representative either photographic or video documentation prior to commencement of Work on the Site.
 2. The Contractor, County, and County's Representative will all be present while photographs or videos are recorded to ensure that existing details are captured.
 3. The Contractor shall document the entire area of proposed construction, site entries, and access roads from multiple perspectives.

- C. Construction Photographs and/or Video
1. The Contractor shall provide digital construction images or video showing the progress of the Work.
 2. The documentation shall be made and submitted to the County's Representative at least weekly starting immediately after the date of the pre-construction documentation and continuing as long as the Work is in progress.
 3. Additional photo documentation shall be taken and be of such subjects as may be directed by the County's Representative.

D. Construction Completion Photographs

The Contractor shall provide a digital set of completion photographs after Substantial Completion has been granted. The Contractor, County, and County's Representative will all be present while photographs or videos are recorded to ensure that existing details are captured. The Contractor shall photograph all of the constructed Work, the entire area of construction, and all Site entries and access roads from multiple perspectives.

10. References

- A. The following documents are known to exist regarding the Project and Site. These reports are not part of the Contract Documents and the Contractor is only entitled to rely upon the technical data in these reports.
1. Hurt & Proffitt, Inc. (2013). "DCR – Upper North River Dam #77 Hearthstone Lake Dam Hazard Classification," January 9, 2013.
 2. Schnabel Engineering Consultants, Inc. (2013). "Report of Subsurface Exploration and Evaluation of Headcut Erodibility Indices – Hearthstone Lake Dam and Spillway Modifications – Timmons Group – Upper North River 77, Augusta County, Virginia," April 9, 2013.
 3. Schnabel Engineering, LLC (2017a). "Embankment Modifications Conceptual Design Report, Hearthstone Lake Dam, Augusta County, Virginia." November 29, 2017.
 4. Schnabel Engineering, LLC (2017b). "Geotechnical Data Report, Hearthstone Lake Dam, Augusta County, Virginia." November 29, 2017.
 5. Schnabel Engineering, LLC (2018). "100% Design Report, Hearthstone Lake Dam Rehabilitation, Augusta County, Virginia." August 2018.
 6. USDA-SCS (1964). "Upper North River Watershed of the Potomac River Watershed Project – Floodwater Retarding Dam No. 77 – Augusta and Rockingham Counties, Virginia – AS BUILT." Soil Conservation Service of the U.S. Department of Agriculture and Shenandoah Valley Soil Conservation District.
 7. USDA-NRCS (2015). "Final – Supplemental Watershed Plan No. 7 & Environmental Assessment for the Rehabilitation of Floodwater Retarding Structure No. 77 of the Upper North River Watershed – Augusta County, Virginia." Natural Resources Conservation Service of the U.S. Department of Agriculture in

cooperation with Augusta County Board of Supervisors, Headwaters Soil and Water Conservation District, and USDA Forest Service.

8. USDA-NRCS (2017b). “NRCS 95% Design Report, Upper North River 77, Hearthstone Lake Dam Rehabilitation Project, Augusta County, Virginia,” March 2017.

The following is a list of attachments that are additional documents incorporated with this Invitation for Bid #81010-19-01:

1. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246): number of pages 1
2. Natural Resources Conservation Service Supplement to OSHA Parts 1910 and 1926 Construction Industry Standards and Interpretations: number of pages 7
3. USACE Nationwide Permit: number of pages 16
4. Emergency Action Plan for Upper North River #77 COVERING THE TIME PERIOD DURING DAM REHABILITATION, August 2018: number of pages 38
5. Construction and Material Specifications: number of pages 236
6. Drawings (plans): number of pages 36

Attachment 1

**Notice of Requirements for Affirmative Action to Ensure
Equal Employment Opportunity (Executive Order 11246)**

NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<u>Timetables</u>	<u>Goals for Minority Participation For All Trades</u>	<u>Goals for Female Participation in All Trades</u>
Indefinite	12.0	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. These goals for female and minority utilization in each construction craft and trade must be included in all Federal or federally assisted construction contracts and subcontracts in excess of \$10,000.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is: Augusta County, Virginia.

Attachment 2

Natural Resources Conservation Services Supplement to OSHA Parts 1910 and 1926 Construction Industry Standards and Interpretations

NATURAL RESOURCES CONSERVATION SERVICE SUPPLEMENT TO OSHA PARTS 1910 AND 1926 CONSTRUCTION INDUSTRY STANDARDS AND INTERPRETATIONS

The contractor shall comply with OSHA (Occupational Safety and Health Administration) Parts 1910 and 1926, Construction Industry Standards and Interpretations, and with this supplement.

Requests for variances or waivers from this supplement are to be made to the contracting officer in writing supported by evidence that every reasonable effort has been made to comply with the contractual requirements. A written request for a waiver or a variance shall include--

- (1) Specific reference to the provision or standard in question;
- (2) An explanation as to why the waiver is considered justified; and
- (3) The contractor's proposed alternative, including technical drawings, materials, or equipment specifications needed to enable the contracting officer to render a decision.

No waiver or variance will be approved if it endangers any person. The contractor shall not proceed under any requested revision of a provision until the contracting officer has given written approval. The contractor is to hold and save harmless the USDA, Natural Resources Conservation Service free from any claims or causes of action whatsoever resulting from the contractor or subcontractors proceeding under a waiver or approved variance.

Copies of OSHA Parts 1910 and 1926, Construction Industry Standards and Interpretations, may be obtained from:

Attn: Superintendent of Documents
U.S. Government Printing Office
Washington, D.C. 20402

NATURAL RESOURCES CONSERVATION SERVICE SUPPLEMENT TO OSHA PARTS 1910 AND 1926

CONSTRUCTION INDUSTRY STANDARDS AND INTERPRETATIONS

GENERAL CONTRACTOR REQUIREMENTS

1.1 SAFETY PROGRAM.

Each contractor is to demonstrate that he or she has facilities for conducting a safety program commensurate with the work under contract. The contractor is to submit in writing a proposed comprehensive safety program to the contracting officer for approval before the start of construction operations. The program is to specifically state what provisions the contractor proposes to take for the health and safety of all employees, including subcontractors and rental equipment operators. The program shall be site specific and provide details relevant to the work to be done, the hazards associated with the work, and the actions that will be necessary to minimize the identified hazards.

1.2 PRECONSTRUCTION SAFETY MEETING.

Representatives for the contractor are to meet with the contracting officer (CO) or the CO's Representative before the start of construction to discuss the safety program and the implementation of all health and safety standards pertinent to the work under this contract.

1.3 JOINT SAFETY POLICY COMMITTEE.

The contractor or designated onsite representative is to participate in monthly meetings of a Joint Safety Policy Committee, composed of USDA, Natural Resources Conservation Service and contractor supervisory personnel. At these meetings the contractor's project manager and the contracting officer will review the effectiveness of the contractor's safety effort, resolve current health and safety problems, and coordinate safety activities for upcoming work.

1.4 SAFETY PERSONNEL.

Each contractor is to designate a competent supervisory employee satisfactory to the contracting officer to administer the safety program.

1.5 SAFETY MEETINGS.

A minimum of one "on-the-job" or "toolbox" safety meeting is to be conducted each week by all field supervisors or foremen and attended by mechanics and all construction personnel at the jobsite. The contractor is to also conduct regularly scheduled supervisory safety meetings at least monthly for all levels of job supervision.

1.6 SAFETY INSPECTION.

The contractor shall perform frequent and regular safety inspections of the jobsite, materials, and equipment, and shall correct deficiencies.

1.7 FIRST AID TRAINING.

Every contractor foreman's work crew must include an employee who has a current first aid certificate from the Mine Safety and Health Administration, American Red Cross, or other state-approved organization.

1.8 REPORTS.

Each contractor is to maintain an accurate record of all job-related deaths, diseases, or disabling injuries. The records shall be maintained in a manner approved by the contracting officer. A copy of all reports is to be provided to the contracting officer. All fatal or serious injuries are to

be reported immediately to the contracting officer, and every assistance is to be given in the investigation of the incident, including submission of a comprehensive narrative report to the contracting officer. Other occurrences with serious accident potential, such as equipment failures, slides, and cave-ins, must also be reported immediately. The contractor is to assist and cooperate fully with the contracting officer in conducting accident investigations. The contracting officer is to be furnished all information and data pertinent to investigation of an accident.

1.9 CERTIFICATION OF INSURANCE.

Contractors are to provide the contracting officer or his or her authorized representative with certificates of insurance before the start of operations indicating full compliance with State Worker's Compensation statutes.

FIRST AID AND MEDICAL FACILITIES

2.1 FIRST AID KITS.

A 16-unit first aid kit approved by the American Red Cross is to be provided at accessible, well-identified, locations at the ratio of at least 1 kit for each 25 employees. The first aid kits are to be moisture proof and dust tight, and the contents of the kits are to be replenished as used or as they become ineffective or outdated.

2.2 EMERGENCY FIRST AID.

At least one employee certified to administer emergency first aid must be available on each shift and duly designated by the contractor to care for injured employees. The names of the certified employees shall be posted at the jobsite.

2.3 COMMUNICATION AND TRANSPORTATION.

Prior to the start of work, the contractor is to make necessary arrangements for prompt and dependable communications, transportation, and medical care for injured employees. At least one stretcher and two blankets shall be readily available for transporting injured employees.

2.4 FIRST AID AND MEDICAL REPORTS.

The contractor is to maintain a record system for first aid and medical treatment on the jobsite. Such records are to be readily available to the contracting officer and are to include--

- (a) A daily treatment log listing chronologically all persons treated for occupational injuries and illnesses;
- (b) Cumulative record of injury for each individual;
- (c) Monthly statistical records of occupational injuries, classified by type and nature of injury; and
- (d) Required records for worker's compensation.

2.5 SIGNS AND DIRECTIONAL MARKINGS.

Adequate identification and directional markers are to be provided to readily denote the location of all first aid stations.

2.6 EMERGENCY LISTING.

A listing of telephone numbers and addresses of doctor, rescue squad, hospital, police, and fire departments is to be provided at all first aid locations.

PHYSICAL QUALIFICATION OF EMPLOYEES

3.1 GENERAL REQUIREMENTS.

Persons employed throughout the contract are to be physically qualified to perform their assigned duties. Employees must not knowingly be permitted or required to work while their ability or alertness is impaired by fatigue, illness, or any other reason that may jeopardize themselves or others.

3.2 HOIST OPERATORS.

Operators of cranes, cableways, and other hoisting equipment shall be examined annually by a physician and provided with a certification stating that they are physically qualified to safely operate hoisting equipment. The contractor is to submit a copy of each certification to the contracting officer.

3.3 HEAVY EQUIPMENT OPERATORS.

It is recommended that operators of trucks and heavy construction equipment be given physical examinations to determine if they are physically qualified to perform their assigned work without endangering themselves or others.

3.4 MOTOR VEHICLE OPERATORS.

Operators of motor vehicles engaged primarily in the transportation of personnel are to be 18 years of age or older and have a valid state operator's permit or license for the equipment being operated. The operators must have passed a physical examination administered by a licensed physician within the past year showing that they are physically qualified to operate vehicles safely.

PERSONAL PROTECTIVE EQUIPMENT

4.1 HARD-HAT AREAS.

The entire jobsite, with the exception of offices, shall be considered a hard-hat area. All persons entering the area are, without exception, required to wear hard-hats. The contractor shall provide hard-hats for visitors entering hard-hat areas.

4.1.1 LABELS.

Hard-hats shall bear a manufacturer's label indicating design compliance with the appropriate ANSI (American National Standards Institute) standard.

4.2 POSTING.

Signs at least 3 by 4 feet worded as follows with red letters (minimum 6 inches high) and white background shall be erected at access points to designated hard-hat areas:

CONSTRUCTION AREA -- HARD-HAT REQUIRED BEYOND THIS POINT

These signs are to be furnished and installed by the contractor at entries to shops, construction yards, and job access points.

4.3 SAFETY GOGGLES (DRILLERS)

4.3.1 DRILLERS AND HELPERS.

Drillers and helpers operating pneumatic rock drills must wear protective safety goggles.

MACHINERY AND MECHANIZED EQUIPMENT

5.1 SAFE CONDITION.

Before any machinery or mechanized equipment is initially used on the job, it must be inspected and tested by qualified personnel and determined to be in safe condition and appropriate for the

intended use. Operators shall inspect their equipment prior to the beginning of each shift. Any deficiencies or defects shall be corrected prior to using the equipment. Safety equipment, such as seatbelts, installed on machinery is to be used by equipment operators.

5.2 TAGGING AND LOCKING.

The controls of power-driven equipment under repair are to be locked. An effective lockout and tagging procedure is to be established, prescribing specific responsibilities and safety procedures to be followed by the person or persons performing repair work.

5.3 HAUL ROADS FOR EQUIPMENT

5.3.1 ROAD MAINTENANCE.

The contractor shall maintain all roadways, including haul roads and access roads, in a safe condition so as to eliminate or control dust and ice hazards. Wherever dust is a hazard, adequate dust-laying equipment shall be available at the jobsite and utilized to control the dust.

5.3.2 SINGLE LANE HAUL ROADS.

Single-lane haul roads with two-way traffic shall have adequate turnouts. Where turnouts are not practical, a traffic control system shall be provided to prevent accidents.

5.3.3 TWO-WAY HAUL ROADS.

On two-way haul roads, arrangements are to be such that vehicles travel on the right side wherever possible. Signs and traffic control devices are to be employed to indicate clearly any variations from a right-hand traffic pattern. The road shall be wide enough to permit safe passage of opposing traffic, considering the type of hauling equipment used.

5.3.4 DESIGN AND CONSTRUCTION OF HAUL ROADS.

Haul road design criteria and drawings, if requested by the contracting officer, are to be submitted for approval prior to road construction. Sustained grades shall not exceed 12 percent and all curves shall have open-sight line with as great a radius as practical. All roads shall be posted with curve signs and maximum speed limits that will permit the equipment to be stopped within one-half the minimum sight distance.

5.3.5 OPERATORS.

Machinery and mechanized equipment shall be operated only by authorized qualified persons.

5.3.6 RIDING ON EQUIPMENT.

Riding on equipment by unauthorized personnel is prohibited. Seating and safety belts shall be provided for the operator and all passengers.

5.3.7 GETTING ON OR OFF EQUIPMENT.

Getting on or off equipment while the equipment is in motion is prohibited.

5.3.8 HOURS OF OPERATION.

Except in emergencies, an equipment operator shall not operate any mobile or hoisting equipment for more than 12 hours without an 8-hour rest interval away from the job.

5.4 POWER CRANES AND HOISTS (truck cranes, crawler cranes, tower cranes, gantry cranes, hammerhead cranes, derricks, cableways, and hoists)

5.4.1 PERFORMANCE TEST.

Before initial onsite operation, at 12-month intervals, and after major repairs or modification, power cranes, derricks, cableways, and hoists must satisfactorily complete a performance test to demonstrate the equipment's ability to safely handle and maneuver the rated loads. The tests shall be conducted in the presence of a representative of the contracting officer. Test data shall be recorded and a copy furnished the contracting officer.

5.4.2 PERFORMANCE TEST—Power Cranes (Crawler mounted, truck mounted, and wheel mounted).

The performance test is to be carried out with outriggers set and with a test load weighing 110 percent of the rated capacity when the boom angle is from 30 degrees to 60 degrees above the horizontal. The test is to consist of raising, lowering and braking the load and rotating the test load through 360 degrees at the specified boom angle or radius. Cranes equipped with jibs or boom tip extensions are to be tested using both the main boom and the jib, with an appropriate test load in each case.

5.4.3 PERFORMANCE TEST--Derricks, Gantry Cranes, Tower Cranes, Cableways, and Hoists, including Overhead Cranes.

This equipment is to be performance tested with a test load weighing 110 percent of the rated load. In testing cableways, the test load is to be traveled to the upstream and downstream limits of travel and thoroughly performance tested in at least three travel positions, including both limits of travel.

5.4.4 BOOM ANGLE INDICATOR.

Power cranes (includes draglines) with booms capable of moving in the vertical plane shall be provided with a boom angle indicator in good working order.

5.4.5 CRANE TEST CERTIFICATION.

The performance test required by 5.4.2 and 5.4.3 is fulfilled if the contractor provides the contracting officer a copy of the certificate of inspection made within the past 12 months by a qualified person or by a government or private agency satisfactory to the contracting officer.

5.4.6 POSTING FOR HIGH VOLTAGE LINES.

A notice of the 10-foot (or greater) clearance required by OSHA 1926.550, Subpart N, shall be posted in the operator's cab of cranes, shovels, boom-type concrete pumps, backhoes, and related equipment.

5.4.7 BOOM STOPS.

Cranes or derricks with cable-supported booms, except draglines, shall have a device attached between the gantry of the A-frame and the boom chords to limit the elevation of the boom. The device shall control the vertical motions of the boom with increasing resistance from 83 degrees or less, until completely stopping the boom at not over 87 degrees above horizontal.

5.4.8 SAFETY HOOKS.

Hooks used in hoisting personnel or hoisting loads over construction personnel or in the immediate vicinity of construction personnel shall be forged steel equipped with safety

keepers. When shackles are used under these conditions, they shall be of the locking type or have the pin secured to prohibit turning.

5.5 ROLLOVER PROTECTIVE STRUCTURES (ROPS)

5.5.1 ROLLOVER PROTECTIVE STRUCTURES.

OSHA 1926, Subpart W, Overhead Protection, Sections 1000 and 1002 are applicable regardless of the year in which the equipment was manufactured and regardless of the struck capacity of the equipment.

5.5.2 EQUIPMENT REQUIRING ROPS.

The requirement for ROPS meeting 5.5.1 above applies to crawler and rubber-tired tractors such as dozers, push-and-pull tractors, winch tractors, tractors with backhoes, and mowers; off-highway, self-propelled, pneumatic-tired earthmovers, including scrapers, motor graders and loaders; and rollers, compactors, and water tankers (excluding trucks with cabs). These requirements shall also apply to agricultural and industrial tractors and similar equipment.

5.5.3 EQUIPMENT REQUIRING SEATBELTS.

The requirements for seatbelts as specified in OSHA 1926, Subpart O, Motor Vehicles, Mechanized Equipment, and Marine Operations, Section 1926.602 shall also apply to self-propelled compactors and rollers, and rubber-tired skid-steer equipment.

LADDERS AND SCAFFOLDING

6.1 LADDERS.

OSHA 1926, Subpart L - Section 450. Ladders shall be used as work platforms only when use of small hand tools or handling of light material is involved. No work requiring lifting of heavy materials or substantial exertion shall be done from ladders.

6.2 SCAFFOLDING.

OSHA 1926, Subpart L - Section 451. Scaffolds, platforms or temporary floors shall be provided for all work except that which can be done safely from the ground or similar footing.

6.3 SAFETY BELTS, LIFELINE, AND LANYARDS.

OSHA 1926, Subpart E, Section 104. Lifelines, safety belts and lanyards independently attached or attended, shall be used when performing such work as the following when the requirements of 6.1 or 6.2 above cannot be met.

- (a) Work on stored material in hoppers, bins, silos, tanks, or other confined spaces.
- (b) Work on hazardous slopes, structural steel, or poles; erection or dismantling of safety nets, tying reinforcing bars; and work from Boatswain's chairs, swinging scaffolds, or other unguarded locations at elevations greater than 6 feet.
- (c) Work on skips and platforms used in shafts by crews when the skip or cage does not block the opening to within 1 foot of the sides of the shaft, unless cages are provided.

Attachment 3

USACE Nationwide Permit

Attachment 4

Emergency Action Plan for Upper North River #77 COVERNING THE PERIOD DURING DAM REHABILITATION

Revised August 2018

Attachment 5

**Construction and Material Specifications
(Separate Document)**

Attachment 6

Drawings (Plans)
(Separate Document)