

SECTION 00700

GENERAL CONDITIONS

1. DEFINITIONS:

- A. Wherever the words defined in this section or pronouns used in their place, occur in the specifications, proposal, contract, or bonds, they shall have the following meanings:
- B. **OWNER** shall mean **Caroline County, Maryland**.
- C. **ENGINEER** shall mean the Engineer designated by the Owner or other duly authorized person or agency, said agent acting within the scope of the particular duties entrusted to them, on behalf of the Owner.
- D. **CONTRACTOR** shall mean the party, company, business, corporation, agent, or other business entity awarded a contract for construction services to act for said Owner, entering into a contract with the Owner for the performance of the work required.
- E. Whenever in the specifications or upon the drawings the words, **DIRECTED, REQUIRED, PERMITTED, ORDERED, DESIGNATED, PRESCRIBED**, or words of like definition are used, it shall be understood that the directions, requirements, permission, order, designation, or prescription of the Engineer is intended, and similarly the words, **APPROVED, ACCEPTABLE, SATISFACTORY**, or words of like definition shall mean approved by, or acceptable or satisfactory to the Engineer unless otherwise stated.
- F. **SPECIFICATIONS** shall mean the language, description, direction, and explanation of the requirements of the work to be performed by the Contractor under the award of the Contract. The specifications shall be made up of and include all components and sections of the "Proposal, specifications, contract and drawings" as titled. All related construction drawings, field reports, shop drawings, manufacturer's material and installation descriptions, and instructions as approved shall be included within the "Specifications".

2. DRAWINGS:

The work under the Contract shall be built with the materials, to the sizes and dimensions, on the lines and slopes and at the depths shown, with all connections and in the manner called for by the specifications and shown on the Contract drawings, or in accordance with such changes as may be approved from time to time during the progress of the work as hereinafter provided.

3. INCREASE OR DECREASE OF QUANTITIES

- A. The Owner reserves the right to increase or reduce the quantity of material to be furnished or work to be done under any item of the proposal, wherever it deems it advisable; or necessary so to do and such increase or reduction shall in no way negate or void the Contract.
- B. The Contractor will be paid for the actual quantity of authorized work done or material furnished under each item of the proposal, at the unit price bid or stipulated for such item. In case the quantity of any item is increased as above provided, the Contractor shall not be entitled to compensation over and above the unit price bid for such item; and in case the quantity of any item is reduced as above provided, the Contractor shall have no claim for damages on account of loss of anticipated profits because of such reduction.

4. CHANGES IN WORK:

- A. The Owner reserves the right to change the alignment, grade, form, length, dimensions, or materials of the work under the Contract, whenever any conditions or obstructions are met that render such changes desirable or necessary. All such alterations shall be paid for at a unit price bid for these items of work, except as follows:
  - (1) In the event such changes make the work less expensive to the Contractor, a proper deduction shall be made from the Contract prices and the Contractor shall have no claim on this account for damages or for anticipated profits on the work that may be deleted.
  - (2) In the event such changes make the work more expensive, proper additions shall be made to Contract prices. Price changes shall be presented by the Contractor prior to the commencement of work. Any such deduction or addition shall be approved by the Engineer.

5. WORK TO BE DONE AND MATERIALS TO BE FURNISHED:

The Contractor shall do all the work and furnish all the labor, materials, tools, and appliances, except as specifically stated as being furnished by the Owner, necessary or proper for performing the work required by the Contract, in the manner called for by the specifications and contract drawings within the Contract time. The Contractor shall complete all work, together with such extra work as may be required, at the prices stipulated, to the satisfaction of the Owner and the Engineer and in accordance with the specifications and drawings. Failure of the Specifications or drawings to mention specifically any portion of the work normally attributed for the successful completion of the work under the Contract, shall not relieve the Contractor of providing such work, and no increase in price will be considered. Such work will be considered incidental to the performance of the work.

6. SERVING OF NOTICES:

The mailing, in a United States Post Office Box, the sending of communication via facsimile or via email, of written communication, notice of the order, addressed to the Contractor at the business address, facsimile or email filed with the Owner, or to his office at the site of the work, shall be considered as sufficient service upon the Contractor of such communication, notice of order, and the date of said service shall be the date of such communication.

7. ORDERS TO FOREMEN:

During the absence of the Contractor from any part of the work where and at such time as it may be necessary or desirable to give directions, said directions may be given by the Engineer to the superintendent or foreman who has charge of the particular part of the work, and they shall be received and obeyed. The giving of orders in the manner aforesaid shall be equivalent to their receipt by the Contractor.

8. CONTROL AND CONDUCT OF WORK:

It is intended that the Contractor shall be allowed, in general, to carry on the Contract in accordance with such general plan as may appear to him most desirable, however, the Engineer, at his discretion, may from time to time direct the order in which, and points at which the work shall be prosecuted; and may exercise such general control over the conduct of the work, at any time or place as shall be required, in his opinion to safeguard the interest of the Owner, and the Contractor shall have no claim for damages or extra compensation on account of the fact that it shall have been necessary to carry on the work in different sequence from that which he may have contemplated. The Contractor shall immediately comply with any and all orders and instructions given by the Engineer, but nothing herein contained shall be considered such an assumption of control over the work by the Owner or the Engineer as to relieve the Contractor of any of his obligations or liabilities under the Contract.

9. DECISIONS AND EXPLANATIONS BY ENGINEER:

A. The Engineer shall make all necessary explanations as to the meaning and intent of the specifications and drawings and shall give all orders and directions, either contemplated therein or thereby, or in every case in which a difficult or unforeseen condition arises during the prosecution of the work. Should there be any discrepancies, or should any misunderstanding arise as to the import of anything contained in the drawings and specifications, the decision of the Engineer shall be final and binding. Any errors or omissions on the drawings or in the specifications may be corrected by the Engineer when such corrections are necessary for the proper fulfillment of their intent as directed by him.

B. The Engineer shall in all cases determine the amount, quality, and acceptability of the work to be paid for under the Contract and shall decide all questions in relation to said work. His decision and estimate shall be final and conclusive, and in case

any question arises between the parties bound by the Contract, such decision and estimate shall be a condition precedent to the right of the Contractor to receive payment under that part of the Contract which is in dispute.

- C. Decisions and interpretations will be rendered by the Engineer as promptly as possible, but should delay occur, for any reason, the Contractor shall have thereby no claim for damage or extra compensation.

10. INSPECTION:

The Owner will appoint such person, firm, or representative as it may deem necessary to inspect the materials furnished and the work done under the Contract and to see that the same strictly corresponds with the drawings and specifications. Work and materials will be inspected promptly, but if, for any reason, a delay should occur, the Contractor shall have thereby no claim for damages or extra compensation. Materials and workmanship shall be always subject to the approval of the Engineer; but no inspection, approval, or acceptance of any part of the work, or of the materials used therein, nor any payment on account thereof, shall prevent the rejection of said materials or work at any time thereafter during the existence of the Contract, should said work or materials be found to be defective or not in accordance with the requirements of the Contract.

11. LINES, GRADE, ELEVATIONS, ETC.:

- A. The approved Contract drawings included as part of the Specifications will establish the main baseline and benchmarks for construction control. The Contractor shall then be responsible for establishing all lines and grades as needed to construct the project in accordance with the plans and specifications. Such baselines and benchmarks will be given as needed, but if, for any reason, minor delays should occur, the Contractor shall have hereby no claim for damages or extra compensation.
- B. The Contractor shall protect and preserve the main baseline and benchmarks that have been established by the Engineer and shall make no changes in their location. If during the prosecution of the work, the Contractor displaces or destroys the baselines or benchmarks, the cost of replacing them shall be borne by the Contractor.

12. DEFAULT IN COMPLETION:

The Engineer shall determine the number of calendar days that the Contractor is in default in completing the Contract and shall certify the same to the Owner in writing. For each calendar day so certified the Contractor shall pay the Owner the sum stipulated in the SPECIAL CONDITIONS, which sum is hereby agreed upon, not as a penalty, but as liquidated damages which the Owner will suffer by reason of such default: provided, however, the Owner may, as hereinafter provided, extend the time for completion of the work beyond the contract time, in writing. The Owner shall be fully authorized and empowered to deduct and retain the amount of any damages, determined as hereinbefore

stipulated, for each date that the Contractor shall be in default in completing the work after the time fixed in the Contract, or after any later date to which the time for completion may have been extended by the Owner, from any monies due or to become due the Contractor under the Contract, at any time after such damages are so incurred. The permitting of the Contractor to finish the work or any part of it after the time fixed for its completion, or after the date to which the time of completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of its rights under the Contract.

13. EXTENSION OF TIME:

A. If the amount of work done under the Contract is greater than indicated by the statement of quantities, or if the Contractor is materially obstructed or delayed in the prosecution of the work by delay on the part of the Owner in furnishing such materials for facilities as are required to be furnished by it, acts of others on conditions beyond his control, the Contractor shall be entitled to such extension of the contract time for the completion of the work as the Engineer shall certify, in writing, to be just and proper; provided and provided only, that a claim for such extensions all be made by the Contractor by a written notice sent to the Engineer within 10 days after the date when alleged cause for extension of time occurred. All such claims shall state specifically the amount of delay that the Contractor believes himself to have suffered. If said statement, thus made out, is not received within the prescribed time, the claim for extension of time shall be forfeited and invalidated.

B. No extension of time will be granted for ordinary delays or minor accidents.

14. EMPLOYMENT OF SKILLFUL WORKMEN:

The Contractor shall employ only competent, skillful men to do or supervise the work, and whenever the Engineer shall, in writing, notify the Contractor that any man employed on the work, is, in his opinion, incompetent, disobedient, unfaithful, disorderly, discourteous or otherwise unsatisfactory, such man shall be removed and shall not again be employed on the work, except with the consent of the Engineer.

15. JOBSITE SAFETY

The Contractor shall place sufficient lights, only when required, on or near the work and keep them burning from twilight to sunrise. He shall erect suitable railings, fences, or other protection about open trenches, that may be necessary for public safety, and shall at all times take all necessary precautions to avoid accidents or injury to persons or property. The Contractor shall, upon written notice from the Engineer that he has not satisfactorily complied with the foregoing requirements, immediately take such measures and provide such means and labor to comply therewith as the Engineer may direct, the Contractor shall not be relieved of his obligations under the Contract by any such notice or directions given by the Engineer, or by his neglect, failure or refusal to give such notice or directions. In case the Contractor shall not comply with any order with respect to guarding his work within a timeframe deemed appropriate and stipulated by the Engineer, the Engineer may provide the required protection and the cost thereof will be deducted from any money due

or to become due the Contractor under the Contract. The Contractor shall not be relieved of his obligations under the Contract by any such action of the Engineer.

16. WATER SUPPLY:

The Contractor shall provide at his own expense, such quantities of clean water as may be required for any and all purposes under the Contract. He shall take particular care to furnish his employees with potable drinking water and dispense it in accordance with the regulations of local and state authorities. All sources of water supply to be used by the Contractor in connection with the work shall be subject to the approval of the Engineer. If water is acquired from the public portion of a potable water system, it shall be obtained only with the permission and supervision of the public utility system owner. There will be no charge to the Contractor for normal consumption. Any additional water use by the Contractor for purposes other than consumption shall be approved by the utility system owner and may include a monetary charge, which shall be determined by the utility system owner.

17. SANITARY ARRANGEMENTS:

Approved sanitary conveniences for the use of laborers and others employed on the work, shall be constructed and maintained by the Contractor, in such manner and at such points as shall be approved or directed, and their use shall be strictly enforced. The collections of the same shall be disinfected or removed when directed by the Engineer.

18. MAINTAINING TRAFFIC:

The Contractor shall carry out his work in a manner that traffic and access to properties shall be kept open and always operating in a safe fashion. Any and all traffic control plans, whether drawn, written, or verbally intended, shall be approved by the Engineer prior to implementation.

19. RESTORATION OF DISTURBED AREAS:

Upon completion of the work, all roadways, streets, shoulder areas, driveways, walks, steps, lawns, and slopes that have been disturbed shall be restored to their original or better condition unless otherwise specified and the cost, therefore, shall be included in the prices stipulated on the Proposal Form.

20. CONNECTIONS TO EXISTING FACILITIES:

A. Connections to existing facilities shall be made only at such times as approved by the Engineer in writing. It shall be the Contractor's responsibility to coordinate any connections with the utility owner and to notify all customers affected by any shutdown during the time of making connections. All methods and plans for notification shall be approved by the Engineer prior to any action thereof.

B. The cost of making such connections to existing water mains and sewer structures

shall be included in the Unit Price bid for constructing the mains within limits shown on contract drawings.

21. LAWS AND REGULATIONS:

The Contractor at all times, shall observe and comply with all federal, state, municipal, and/or local laws, ordinances, rules, and regulations in any manner affecting the work, and all such orders or decrees as may exist at present and those which may be enacted later, of bodies or tribunals having jurisdiction or authority over the work, and shall indemnify and save harmless the Owner and all its officers, agents and employees against any claim or liability arising from or based from or based on the violation of any such laws, ordinances, rules, regulations, order or decree, whether such violations be by the Contractor or by any subcontractor or any of their agents and/or employees.

22. PATENT RIGHTS:

A. Whenever any article, materials, appliance, process, composition combination, means or thing called for by these specifications is covered by Letter Patent, the successful bidder must secure, before using or employing such material, appliance, etc. the assent in writing of the Owner or licensee of such Letter Patent and file same with the Owner.

B. The Contractor shall be responsible for any claims made against the Owner, its agents, and employees for any actual alleged infringement of patents by the use of any such patented articles, appliances, etc., in the construction and completion of the work, and shall save harmless and indemnify the Owner, its agents, and employees from all costs, expenses, and damages, including solicitor's attorney's fees, which the Owner may be obligated to pay by reason of any actual or alleged infringement of patent in the construction and completion of the work herein specified.

23. UNRESPONSIVE AND UNBALANCED BIDS:

To better ensure fair competition, and to permit a determination of the lowest responsible bidder, unresponsive bids, or bids obviously unbalanced may be rejected by the Owner.

24. CARE AND PROTECTION OF WORK:

From the commencement of the Contract until its completion, the Contractor shall be solely responsible for the care of the work, and all injury or damage to the same, from whatever cause, shall be made good by him, at his own expense, before the final estimate is made. He shall provide suitable means of protection for all materials intended to be used in the work and for the work in progress, as well as for completed work.

25. WORKMANSHIP:

All materials furnished and all work done shall be of the quality and character required by

the drawings and specifications. Where no standard is specified for such work or materials, they shall be of a kind acceptable to the Engineer. Any unsatisfactory materials furnished or work done; at whatever time they may be discovered, shall be immediately removed and satisfactorily replaced by the Contractor, when notified to do so by the Engineer. If the Contractor shall neglect or refuse to remove such unsatisfactory work or materials within 48 hours after the receipt of the above-mentioned notice, or if he shall not make satisfactory progress in doing so, the Engineer may cause said work or material to be removed and satisfactorily replaced, by contract or otherwise, and the expense thereof shall be charged to the Contractor. Such expense shall be deducted from the money due or to become due the Contractor under the Contract. Upon completion of the Contract, the entire work shall be delivered to the Owner in perfect, complete, and in satisfactory condition.

26. DEFECTIVE WORK:

Neither the inspection or supervision of the work nor the presence or absence of any employee of the Owner during the execution of any part of the work shall relieve the Contractor of any of his obligations under the Contract or of conforming to his work as shown on the drawings: and defective work shall be made good and unsuitable material will be rejected: notwithstanding that such work and material may have been previously overlooked and accepted or estimated for payment. If the work, or any part thereof, shall be found defective or to have been damaged, at any time before the final acceptance of the whole work, the Contractor shall forthwith make good such defect, or injury or in a manner satisfactory to the Engineer, without extra compensation therefore, even though said defect or injury may not have been due to any act, default or neglect on the Contractor's part, provided however, that should such defective work result from inherent flaws in the materials furnished by the Owner, the materials to replace same will be furnished by the Owner and the cost of removing and replacing said defective work will be paid for as extra work. All materials shall be carefully examined by the Contractor for defects, just before placing, and any found defective shall not be placed in the work.

27. REMOVAL OF REJECTED MATERIAL:

If any material brought upon the ground or selected for use in the work shall be condemned by the Engineer as unsuitable or not in conformity with the specifications, the Contractor shall forthwith remove it from the vicinity of the work, without delay, and upon his failure to do so within 48 hours after the receipt of notice, the condemned materials may be removed by the Engineer, and the cost of said removal shall be deducted from any moneys due or to become due the Contractor under the Contract.

28. JOBSITE CLEAN UP:

On or before the completion of the work, the Contractor shall without charge therefore, tear down and remove all temporary buildings and other structures built by him, shall remove all rubbish of all kinds from any ground which he has occupied, and shall leave the line of the work in a clean and neat condition to the owner's satisfaction.

29. MEASUREMENT OF WORK AND MATERIAL:

All quantities of work and material to be paid for will be measured and determined by the Engineer according to the specifications and drawings and the working lines that may be given. No allowance will be made for any excess above the quantities required by the specifications, drawings, and lines on any part of the work, except where excess material has been supplied or work in addition to that required by the Specifications and drawings has been written order of the Engineer and in the absence of default or negligence on the part of the Contractor. Should the dimensions of any part of the work or of the materials be less than those required by the drawings or the directions of the Engineer, only the actual quantities placed will be allowed in measurement.

30. INJURY TO PROPERTY:

In case any direct or indirect damage is done to public or private property, by or because of the work, or in consequence of any act or omission on the part of the Contractor, his employees or agents, the Contractor shall, at his own cost, restore such property to a condition similar to or equal to that existing before such damage was done, by repairing, rebuilding or otherwise, as may be required by the Engineer, or shall make good such damage in a satisfactory manner: and in case of failure on the part of the Contractor to promptly so restore such property, or make good such damage, the Engineer may upon 48 hours written notice, proceed to repair, rebuild or otherwise restore such property as may be necessary and the cost thereof will be deducted from any amounts of money due or to become due the Contractor under the Contract: or the Owner may deduct from any amounts of money due the Contractor a sum sufficient, in the judgment of the Engineer, to reimburse the owners of the property so damaged.

31. INDEMNIFICATION OF OWNER:

The Contractor shall indemnify and save harmless the Owner, Owner's agents, and Engineer from all suits, actions, and damages or costs of every name and description, to which the Owner may be subjected or put by reason of injury to persons or property as a result of the work, whether caused by negligence or carelessness on the part of the Contractor, his servants or agents or by any other cause; and so much of the amounts of money due or become due the Contractor under the Contract as may be considered necessary by the Owner shall be retained until such suits or claims for damages shall have been settled or otherwise disposed of, and satisfactory evidenced to that effect furnished to the Owner.

32. SUSPENDING WORK:

The Owner may suspend the whole or any part of the work under the Contract if in its judgment such action is necessary or advisable. Any claim for such damage shall be subject to the terms of the paragraph for CLAIMS FOR DAMAGE. No allowance, however, will be made for minor interruptions to the work, from whatever cause.

33. ABANDONMENT OF OR DELAY IN WORK:

If the work under the Contract shall be abandoned by the Contractor, or if at any time the

Engineer shall be of the opinion, and shall so certify in writing to the Owner, that the performance of the Contract is unnecessarily or unreasonably delayed, or that the Contractor is violating any of the provisions of the Contract or is executing the same in bad faith, or if the work be not fully completed within the time named for its completion, together with such extension of time as may have been granted, the Owner, by written notice may order the Contractor to discontinue all work there under, or any part thereof; and thereupon the Contractor shall discontinue the work or such part thereof, and the Owner shall have the power, by contract, or otherwise, to complete said work and deduct the entire cost thereof from any amounts of money due or to become due the Contractor under the Contract. For such completion of the work, the Owner may, for itself or its Contractors, take possession of and use or cause to be used any or all materials, tools, machinery, and equipment found on the line of said work. When any part of the Contract is being carried on by the Owner, as herein provided, the Contractor shall continue the remainder of the work in conformity with the terms of the Contract, and in such manner as not to interfere with the workmen employed by the Owner.

34. SUBLETTING AND ASSIGNMENT:

- A. The Contractor shall keep the work under his own control, and shall not assign, by power of attorney or otherwise, nor sublet the work, or any part thereof, without the written consent of the Owner. He shall submit in writing the name of such subcontractor as he intends employing, the portion of the work which the subcontractor is to do or the material which he is to furnish, the subcontractor's place of business, and such other information as the Owner may require, for approval of said subcontractor.

35. WAIVER OF CONTRACT:

Neither the acceptance of the whole nor any part of the work by the Engineer or the Owner, or any of its employees, nor any order by the Owner for the payment of money, nor any payment by the Owner for the whole or any part of the work, nor any extension of time, nor any possession taken by the Owner or its employees, shall operate as a waiver of any portion of the Contract, or any power there reserved to the Owner, or any right to damages therein provided, nor shall any waiver of any breach of the Contract be held to be a waiver of any other or subsequent breach.

36. RIGHT OF RECOVERY:

The Owner shall not, nor shall any employee thereof, be precluded or stopped by any return or certificate made or given by the Owner or any of its employees, under the provision of the Contract, from showing the true and correct amount and character of the work done, the materials furnished by the Contractor or any other person under the Contract, at any time before or after the final completion and acceptance of the work and payment therefore pursuant to any such return or certificate, or from showing that any time that any such return or certificate is untrue and incorrect or improperly made in any particular, or that the work, or any part thereof, does not, in fact, conform to the specifications and drawings: and the Owner shall not be precluded or estopped, notwithstanding any such return or certificate

and payment in accordance therewith from demanding and recovering from the Contractor such damages as it may sustain by reason of his failure to comply with the terms of the Contract.

37. IMPLIED WORK:

All incidental work required by the drawings or specifications, for which no payment is specifically provided, and any work or materials not there specified which are required to complete the work, and which may fairly be implied as included in the Contract and which the Engineer shall judge to be so included, shall be done, or furnished by the Contractor without extra compensation.

38. EXTRA WORK:

A. The Contractor shall do such extra work as may be ordered by the Engineer, in writing, and no claim for extra work will be considered or allowed unless the said work has been so ordered. The extra work will be paid for, either based on unit prices mutually agreed upon by the Contractor and the Owner or as follows:

Separate itemized statements and itemized bills covering the extra work done in each month on each order for extra work shall be delivered to the Engineer before the 5th day of the following month. To all such bills shall be attached vouchers showing the cost of materials supplied by the Contractor that have been incorporated into such extra work. The Contractor shall permit such examination of his books, bills, brochures, and accounts as the Engineer may require in checking bills for extra work.

The amount to be paid to the Contractor for extra work shall be made up of the following items:

- (1) Wages of necessary day laborers and foreman employed on extra work, for such time as they are so employed, plus 65%.
- (2) Actual purchase price, as paid by the Contractor, for materials incorporated into extra work, plus 10%.
- (3) For any machinery or special equipment (other than small tools, whether rented or owned), the use of which has been authorized by the Engineer, the Contractor, and the Engineer shall agree upon rates in writing before such work is begun. For the purpose of definition, equipment with a new cost of five hundred dollars (\$500) or less will be considered small tools.

B. Payment for extra work shall not include any allowance for the time of superintendent, timekeepers, or of any workmen or foreman not employed upon the extra work in question for a definitely and easily ascertainable period, nor for insurance of employees or the public, nor the use, maintenance or repair of tools, nor for the maintenance, operation or repair of machinery, nor office accounting,

engineering or administrative expenses, nor any rent, interest, depreciation or bonding cost, nor any other overhead, collateral, or estimated expense, nor any profit all of which cost shall be deemed to be, and shall be included in said allowance of 65% and 10% on labor and material items respectively.

- C. All extra work shall be done as economically and expeditiously as possible, and under sufficient but not disproportionate supervision. Labor shall be furnished at the current rates and materials shall be charged at the lowest market prices. The Owner may, at its option, furnish any materials required for extra work, and the Contractor shall not be entitled to any allowance or percentage on the material so furnished; likewise, the Owner may supply any necessary machinery or equipment, and the Contractor shall not be entitled to any allowance thereupon.
- D. The decision of the Engineer shall be final and binding upon all questions relating to extra work. If he shall deem that any extra work bill is unreasonable or improperly made, he shall be empowered to require its revision and adjustment in accordance with such terms as he shall judge to be fair and reasonable.
- E. The Engineer shall certify to the Owner for payment of proper bills, made out as above provided and submitted before the prescribed date, upon each written order for extra work. Payment, as approved, for the work done under each extra work order completed during any month will be made upon the current estimate for work completed under the Contract during that month and shall be subject to all the provisions of the Contract relating to the payment of the current estimate. Should the work under any extra work order remain uncompleted during any amount payment thereupon shall not be made until the current estimate is paid for the month during which the work under said extra work order is completed. The Contractor shall not be entitled to any claim for interest on any bill for extra work on account of delay in its approval.
- F. All extra work shall be considered as part of the Contract and shall be subject to all provisions thereof.
- G. In case of neglect or refusal on the part of the Contractor to perform any required extra work, or to make satisfactory progress in its execution, the Contractor shall not interfere with the prosecution of such work by the Owner.
- H. During the progress of extra work, the Contractor shall carry forward any or all parts of the work under the Contract or shall suspend any part of the work that may be necessary or required; and no claim by the Contractor for extra compensation shall thereby be allowed. The Contractor, however, shall be entitled to an extension of time to the extent that the Engineer shall certify that the work under the Contract has been delayed by the performance of said extra work, provided that a claim for such extension shall be submitted within the time prescribed for claims of this nature.

39. CLAIMS FOR DAMAGE:

- A. If the Contractor shall claim compensation for any damage sustained by reason of the acts of the Owner, or an official or agent thereof, he shall, within 5 days after the sustaining of such damage, make a written statement to the Engineer of the nature of the damage sustained, and shall on or before the fifth day of the month succeeding the month in which he shall allege that such damage has been sustained, file with the Engineer an itemized statement of the details and amount of such damage. Unless such statement shall be made as thus required, his claim for compensation shall be forfeited and invalidated, and he shall not be entitled to payment on account of any such damage.
- B. Whenever it shall appear to the Contractor, that, due to the existence of the work, he is about to incur damage, owing to the neglect or refusal of the Engineer to issue an extra work order, or to any other cause whatever, he shall at once notify the Engineer or his representative, in writing, of such fact and state the nature of his possible claim, in order that the Engineer may obtain necessary and authentic information to guide future consideration and action on such claim and unless the Contractor shall comply with this requirement, his claim for damage shall be forfeited and invalidated. Such notification shall not take the place of, but shall be in addition to, the written statement hereinabove required to be submitted within 5 days after the occurrence of an alleged cause for damage.

40. DRAWINGS TO BE FURNISHED BY THE CONTRACTOR:

- A. The Contractor shall submit to the Engineer, detailed electronic drawings, for all fabricated and/or manufactured articles to be furnished by the Contractor for use in this work.
- B. No items requiring submission of detailed drawings shall be manufactured prior to final approval of the drawings.
- C. Drawings submitted will be returned, approved if found correct, or else showing the changes required. Triplicate copies shall be resubmitted after corrections have been made until final approval is given by the Engineer.
- D. The approval of the drawings shall not relieve the Contractor from his responsibility to furnish all materials and perform all work as required by the Contract documents. The Owner will not be responsible for errors or omissions on drawings furnished by the Contractor, even though drawings furnished containing such errors or omissions are inadvertently approved.
- E. The Contractor shall furnish the Engineer with "As-Built" drawings. Said drawings shall represent the actual in-place materials, alignments, grades, invert elevations, arrangements, and locations of all required portions of the work including structures, pipes, drainage facilities, utilities, and other such work items as identified by the

Engineer. Any and all changes in the work from what is shown on the Contract drawings shall be accurately and duly noted on the As-Built drawings. Said drawings shall be maintained continuously by the Contractor and shall be subject to periodic inspection by the Engineer. Any information deemed necessary for inclusion in the As-Built drawings at the time of inspection by the Engineer shall be immediately corrected, listed, updated, or otherwise noted on said drawings. Said drawings shall be delivered to the Engineer for review and acceptance prior to the release of any final payments due to the Contractor under the Contract. Said drawings shall be certified by a Maryland Registered Professional Engineer prior to final submission to the Engineer.

41. CONTRACTOR'S INSURANCE:

The Contractor shall take out and maintain during the life of this Contract, Workman's Compensation Insurance for all of his or any subcontractor's employees employed at the site of the work; and such Public Liability and Property Damage Insurance as shall protect him from claims which may arise from operations under this Contract for personal injury (including accidental death) as well as for property damage – whether such operations are by himself or by any subcontractor, or by anyone directly employed by them. Refer to Information for Bidders for coverage amounts and specific information.

42. EXISTING UTILITIES SHOWN ON DRAWINGS:

Water mains, storm drains, sanitary sewers, and other utilities are shown on the drawings in accordance with the best information available, for use by the Contractor. The Owner assumes no responsibility for the accuracy or completeness of the information shown. Prior to any excavation, the Contractor shall ensure the protection of any and all existing utilities, buried or above ground. Test digging existing utilities to determine alignment and depth shall be employed by the Contractor and shall be his sole responsibility. The Engineer may direct the Contractor to test dig existing utilities when he determines it is advisable to do so. Existing mains and services damaged shall be carefully repaired to the satisfaction of the Engineer by the Contractor, at his expense, using materials of the kinds damaged, or as otherwise approved by the Engineer.

43. USE OF SECTIONS OF COMPLETED WORK:

- A. Whenever, in the opinion of the Engineer, any portion of the work completed or is in acceptable condition for use, it shall be used for the purpose intended, as may be directed, and such use shall not be held to be in any way an acceptance of that portion of the work used, or as a waiver of any of the provisions of the specifications and contract.
- B. Necessary repairs or replacements made in any section of the work, under instructions from the Engineer, due to defective materials or work, natural causes, ordinary wear, and tear, or otherwise, pending final completion and acceptance of the entire work, shall be performed at the expense of the Contractor.

44. GUARANTEE:

- A. The Contractor hereby guarantees all the work performed under this Contract for a period of one year after the date of completion and final payment therefore by the Owner as follows:
- (1) Against all faulty or imperfect materials and against all imperfect, careless, and/or unskilled workmanship.
  - (2) That the entire system, including appurtenances and each and every part thereof, shall operate (with proper care and maintenance) in a satisfactory and efficient manner and in accordance with the requirements of these Contract documents.
  - (3) The Contractor agrees to replace with proper workmanship and materials and to re-execute, correct, or repair, without cost to the Owner, any work which may be found to be improper or imperfect and/or which does not operate in a satisfactory manner or fails to perform as specified.
- B. The guaranteed obligations assumed by the Contractor under these Contract documents shall not be held or taken to be in any way impaired because of the specifications, indication, or approval by or on behalf of the Owner of any articles, materials, means combinations or things used or to be used in the construction, performance and completion of the work or any part thereof.
- C. No use or acceptance by the Owner of the work or any part thereof, nor any failure to use the same, nor any repairs, adjustments replacements, or corrections made by the Owner due to the Contractor's failure to comply with any of his obligations under the Contract documents, shall impair in any way the guaranteed obligations assumed by the Contractor under these Contract documents.

45. TERMINATION OF OWNER'S LIABILITY:

The acceptance of the Contractor of the final payment, made as aforesaid, shall operate as and be a release to the Owner and every officer and agent thereof, from all claims by and liabilities to the Contractor for anything done or furnished for or relating to or affecting the work under the Contract.

46. PROTECTION OF PROPERTY, STRUCTURES AND UNDERGROUND UTILITIES

- A. The Contractor shall, at his own expense, sustain in their places and protect from direct or indirect injury all pipes, poles, utilities, walls, buildings, property markers, and other structures or property in the vicinity of his work, whether above or below the ground, or that may appear in the excavation. He shall always have a sufficient quantity of timber and plank, chains, ropes, etc., on the ground, and shall use them as necessary for sheeting his excavations and for sustaining or supporting any

structures that are uncovered, undetermined, endangered, threatened or weakened. The Contractor shall take all risks attending the presence or proximity of pipes, poles, walls, buildings, and other structures and property, of every kind and description, in the vicinity of his work, whether above or below the surface of the ground; and he shall be responsible for all damage and assume all expense for direct or indirect injury, caused by his work, to any of them, or to any person or property by reason of injury to them, whether such structures are or are not shown on the drawings. Any damage to existing property markers shall be replaced by a Maryland Registered Surveyor, with any associated costs being borne by the Contractor.

- B. In the event that the Contractor damages any existing utility lines that are not shown or the locations of which have not been made known and are not visible to the Contractor, a report thereof shall be made immediately to the Engineer. If determined that repairs are to be made by the Contractor, such repairs will be ordered under the appropriate clause of the Specifications.

47. CHANGE ORDERS

- A. A Change Order is a written order to the Contractor signed by the Owner, issued after execution of the Contract, authorizing a change in the Work or an adjustment in the Contract Sum or the Contract Time. The Contract Sum and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therewith, including the adjustment in the Contract Sum or the Contract Time.
- B. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized by Change Order and shall be performed under the applicable conditions of the Contract Documents.
- C. The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:
  - (1) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - (2) By unit prices stated in the Contract Documents or subsequently agreed upon;
  - (3) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
  - (4) By the method provided in Section (D).
- D. If none of the methods set forth in Sections (a), (b), or (c) is agreed upon, the

Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Engineer on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including, in the case of an increase in the Contract Sum, a reasonable allowance for overhead and profit.

In such case, and also under Sections (c) and (d) above, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; bond premiums; rental value of equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change. Pending the final determination of cost to the Owner, payments on account shall be made on the Architect's Certificate for Payment. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change that results in a net decrease in the Contract Sum will be the amount of the actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

- E. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order that application of the agreed unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or the Contractor, the applicable unit prices shall be equitably adjusted.
- F. Should concealed conditions encountered in the performance of the Work below the surface of the ground or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract, be encountered, the Contract Sum shall be equitably adjusted by Change Order upon a claim by either party made within twenty days after the first observance of the conditions.
- G. If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Engineer written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with the Contract Documents. No such claim shall be valid unless so made. If the Owner and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Engineer. Any change

in the Contract Sum resulting from such claim shall be authorized by Change Order.

- H. If the Contractor claims that additional cost is involved because of, but not limited to, (1) any written interpretation pursuant to Section 00700, Paragraph 9, (2) any order by the Owner to stop the Work, where the Contractor was not at fault, (3) any written order for a minor change in the Work issued pursuant to Section (i), or (4) failure of payment by the Owner, the Contractor shall make such claim as provided in Section (c)1.
- I. The Engineer will have the authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

48. RECORD DRAWINGS AND DOCUMENTS:

- A. Maintain at site one record copy of:
  - 1. Drawings
  - 2. Specifications
  - 3. Addenda
  - 4. Change orders and other modifications to Contract
  - 5. Engineer Field Orders or written instructions.
  - 6. Approved shop drawings, product data and samples
  - 7. Field test reports.