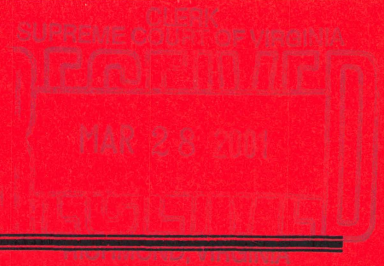


262VA 522



IN THE
Supreme Court of Virginia

RECORD NO. 002255

**LISA C. PECK, Administratrix of the Estate of
William R. Peck, Jr., deceased,**

Appellant,

v.

SAFWAY STEEL PRODUCTS, INC.,

Appellee.

JOINT APPENDIX

**William B. Kilduff
EMROCH & KILDUFF, LLP
3600 West Broad Street, Suite 700
Post Office Box 6856
Richmond, Virginia 23230-0856
(804) 358-1568**

Counsel for Appellant

**William J. Pantele
James F. Skilling
William F. Karn
BUTLER, WILLIAMS,
PANTELE & SKILLING, P.C.
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Richmond, Virginia 23219
(804) 648-4848**

Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING

12314.4

LISA C. PECK, administratrix of
The Estate of William R. Peck, Jr., deceased,

Plaintiff,

v.

SAFWAY STEEL PRODUCTS, INC.
Serve On: Edward R. Parker, Registered Agent
5511 Staples Mill Rd.
Richmond, VA 23228
Henrico County

and

HEK PLATFORMS & HOISTS, INC.,
Serve On: Edward R. Parker, Registered Agent
5511 Staples Mill Rd.
Richmond, VA 23228
Henrico County

and

DUNBAR, MILBY, WILLIAMS, PITTMAN & VAUGHAN, P.C.,
Serve On: Malcolm E. Ritsch, Jr., Registered Agent
1021 E. Cary St., 16th Floor
Richmond, VA 23219
City of Richmond,

Defendants.

MOTION FOR JUDGMENT

The plaintiff moves the court for judgment against the defendants in the sum of SEVEN
MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000.00) and costs as hereinafter
set forth:

COUNT ONE

1. The defendant, Safway Steel Products, Inc. designed, manufactured, marketed,
distributed, delivered, leased, and inspected a certain scaffolding system, including a hoist, to be

Filed in the Clerk's Office this 12th day of 12, 2014. A.M.-P.M.
Writ Tax \$ 25
Fee 150
L.A.N. 2
C.L.N. 2
L.F. Fee 3
Sheriff's Fee 100
Total Paid 180
Teste: BEVILL M. DEAN, CLERK
Kathleen

used during the Sanger Hall wall repair at the Medical College of Virginia campus during the year 1997.

2. That the aforesaid scaffolding, including but not limited to the scaffolding and the braces to the scaffolding and the hoist, were defective, dangerous, unreasonably dangerous, inherently dangerous, unsafe, and unsuitable for the use of the plaintiff and not of merchantable quality.

3. That on or about November 25, 1997, the plaintiff's decedent was on the scaffolding at Sanger Hall when the scaffolding failed and the plaintiff's decedent fell to his death.

4. That the defendant, Safway Steel Products, Inc., negligently designed, manufactured, marketed, distributed, delivered, leased, and inspected the aforesaid scaffolding, including but not limited to the scaffolding and the bracing and hoist.

5. That as a direct and proximate result of the negligence of the defendant, Safway Steel Products, Inc., as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the negligence of the defendant, Safway Steel Products, Inc., as aforesaid, the beneficiaries have suffered damages including but not limited to sorrow, mental anguish and solace, including the society, companionship, comfort, guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the negligence of the defendant, Safway Steel Products, Inc., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

COUNT TWO

The plaintiff repeats, realleges and repleads all of the allegations in paragraphs numbered 1 through 3 inclusive of Count One in the same force and effect as though they were herein fully and specifically set forth in detail.

4. That the defendant, Safway Steel Products, Inc., negligently failed to warn the plaintiff of the defective, dangerous, unreasonably dangerous, inherently dangerous, unsafe, unsuitable and unmerchantable condition of the aforesaid scaffolding system.

5. That as a direct and proximate result of the negligence of the defendants, as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the negligence of the defendant, Safway Steel Products, Inc., as aforesaid, the beneficiaries have suffered damages including but not limited to sorrow, mental anguish and solace, including the society, companionship, comfort,

guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the negligence of the defendant, Safway Steel Products, Inc., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

COUNT THREE

The plaintiff repeats, realleges and repleads all of the allegations in paragraphs numbered 1 through 3 inclusive of Count One in the same force and effect as though they were herein fully and specifically set forth in detail.

4. That the defendant, Safway Steel Products, Inc., impliedly warranted that the scaffolding system was not defective, dangerous, unreasonably dangerous, or inherently dangerous and that it was safe and suitable for the use of the plaintiff's decedent and that it was of merchantable quality and fit for the intended uses and for the general and particular purposes for which it was designed, manufactured, marketed, distributed, delivered, leased and inspected, and that in fact the aforesaid scaffolding system was defective, dangerous, unreasonably dangerous, inherently dangerous and not safe or suitable for the use of the plaintiff's decedent and was not of merchantable quality and was not fit for the intended uses and for the general and particular purposes for which it was designed, manufactured, marketed, distributed, delivered, leased and inspected, and did not comply with the implied warranties made by the defendant, as aforesaid.

5. That as a direct and proximate result of the breach of warranties of the defendants, as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the breach of warranties of the defendant, Safway Steel Products, Inc., as aforesaid, the beneficiaries have suffered damages including but not limited to sorrow, mental anguish and solace, including the society, companionship, comfort, guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the breach of warranties of the defendant, Safway Steel Products, Inc., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

COUNT FOUR

The plaintiff repeats, realleges and repleads all of the allegations in paragraphs numbered 1 through 3 inclusive of Count One in the same force and effect as though they were herein fully and specifically set forth in detail.

4. That the defendant, Safway Steel Products, Inc., expressly warranted that the scaffolding system was not defective, dangerous, unreasonably dangerous, or inherently

dangerous, and it was safe and suitable for the use of the plaintiff's decedent and that it was of merchantable quality and fit for the intended uses and for the general and particular purposes for which it was designed, manufactured, marketed, distributed, delivered, leased, and inspected, and that in fact the aforesaid scaffolding system was defective, dangerous, unreasonably dangerous, inherently dangerous, and not safe or suitable for the use of the plaintiff's decedent and was not of merchantable quality and not fit for the intended uses and for the general and particular purposes for which it was designed, manufactured, marketed, distributed, delivered, leased and inspected, and did not comply with the express warranties made by the defendant, as aforesaid.

5. That as a direct and proximate result of the breach of express warranties of the defendants, as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the breach of express warranties of the defendant, Safway Steel Products, Inc., as aforesaid, the beneficiaries have suffered damages including but not limited to sorrow, mental anguish and solace, including the society, companionship, comfort, guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the breach of express warranties of the defendant, Safway Steel Products, Inc., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

COUNT FIVE

1. The defendant, HEK Platforms & Hoists, Inc., designed, manufactured, marketed, distributed, delivered, sold, tested, and inspected a certain vertical hoist, Model 6L400, for use by the plaintiff's decedent and others at the Sanger Hall repair project during the year 1997.

2. That the aforesaid hoist, including but not limited to the gate to the hoist, was defective, dangerous, unreasonably dangerous, inherently dangerous, unsafe and unsuitable for the use of the plaintiff's decedent and not of merchantable quality.

3. That on or about November 25, 1997, the plaintiff's decedent was on the scaffolding at Sanger Hall when the scaffolding failed and the plaintiff's decedent fell to his death.

4. That the defendant, HEK Platforms & Hoists, Inc., negligently designed, manufactured, marketed, distributed, delivered, sold, tested, and inspected the aforesaid scaffolding, including but not limited to the scaffolding and the bracing.

5. That as a direct and proximate result of the negligence of the defendants, as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the negligence of the defendant, HEK Platforms & Hoists, Inc., as aforesaid, the beneficiaries have suffered damages including but not

limited to sorrow, mental anguish and solace, including the society, companionship, comfort, guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the negligence of the defendant, HEK Platforms & Hoists, Inc., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

COUNT SIX

The plaintiff repeats, realleges and repleads all of the allegations in paragraphs numbered 1 through 3 inclusive of Count One in the same force and effect as though they were herein fully and specifically set forth in detail.

4. That the defendant, HEK Platforms & Hoists, Inc., negligently failed to warn the plaintiff of the defective, dangerous, unreasonably dangerous, inherently dangerous, unsafe, unsuitable and unmerchantable condition of the aforesaid scaffolding system.

5. That as a direct and proximate result of the breach of implied warranties of the defendants, as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the negligence of the defendant, HEK Platforms & Hoists, Inc., as aforesaid, the beneficiaries have suffered damages including but not limited to sorrow, mental anguish and solace, including the society, companionship, comfort, guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the negligence of the defendant, HEK Platforms & Hoists, Inc., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

COUNT SEVEN

The plaintiff repeats, realleges and repleads all of the allegations in paragraphs numbered 1 through 3 inclusive of Count One in the same force and effect as though they were herein fully and specifically set forth in detail.

4. That the defendant, HEK Platforms & Hoists, Inc., impliedly warranted that the scaffolding system was not defective, dangerous, unreasonably dangerous, or inherently dangerous and that it was safe and suitable for the use of the plaintiff's decedent and that it was of merchantable quality and fit for the intended uses and for the general and particular purposes for which it was designed, manufactured, marketed, distributed, delivered, sold, tested and inspected, and that in fact the aforesaid scaffolding system was defective, dangerous, unreasonably dangerous, inherently dangerous and not safe or suitable for the use of the plaintiff's decedent and was not of merchantable quality and was not fit for the intended uses

and for the general and particular purposes for which it was designed, manufactured, marketed, distributed, delivered sold, tested and inspected, and did not comply with the implied warranties made by the defendant, as aforesaid.

5. That as a direct and proximate result of the breach of warranties of the defendants, as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the breach of warranties of the defendant, HEK Platforms & Hoists, Inc., as aforesaid, the beneficiaries have suffered damages including but not limited to sorrow, mental anguish and solace, including the society, companionship, comfort, guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the breach of warranties of the defendant, HEK Platforms & Hoists, Inc., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

COUNT EIGHT

The plaintiff repeats, realleges and repleads all of the allegations in paragraphs numbered 1 through 3 inclusive of Count One in the same force and effect as though they were herein fully and specifically set forth in detail.

4. That the defendant, HEK Platforms & Hoists, Inc., expressly warranted that the scaffolding system was not defective, dangerous, unreasonably dangerous, or inherently dangerous, and it was safe and suitable for the use of the plaintiff's decedent and that it was of merchantable quality and fit for the intended uses and for the general and particular purposes for which it was designed, manufactured, marketed, distributed, delivered, sold, tested, and inspected, and that in fact the aforesaid scaffolding system was defective, dangerous, unreasonably dangerous, inherently dangerous, and not safe or suitable for the use of the plaintiff's decedent and was not of merchantable quality and not fit for the intended uses and for the general and particular purposes for which it was designed, manufactured, marketed, distributed, delivered, sold, tested and inspected, and did not comply with the express warranties made by the defendant, as aforesaid.

5. That as a direct and proximate result of the breach of express warranties by the defendants, as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the breach of express warranties of the defendant, HEK Platforms & Hoists, Inc., as aforesaid, the beneficiaries have suffered damages

including but not limited to sorrow, mental anguish and solace, including the society, companionship, comfort, guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the breach of express warranties of the defendant, HEK Platforms & Hoists, Inc., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

COUNT NINE

1. That the defendant Dunbar, Milby, Williams, Pittman & Vaughan, P.C. was responsible for quality control at the job site of the repair project at Sanger Hall during the year 1997 and approved the design of the scaffolding system.

2. That the scaffolding at the repair project, as well as the vertical hoist, were defective, dangerous, unreasonably dangerous, inherently dangerous, unsafe and unsuitable for the use of the plaintiff and not of merchantable quality.

3. That on or about November 25, 1997, the plaintiff's decedent was on the scaffolding at Sanger Hall when the scaffolding failed and the plaintiff's decedent fell to his death.

4. That the defendants negligently approved the scaffolding and the hoist at the project and were otherwise negligent.

5. That as a direct and proximate result of the negligence of the defendants, as aforesaid, the plaintiff's decedent died on November 25, 1997.

6. That the beneficiaries of the estate of the plaintiff's decedent are:

Lisa C. Peck, wife

Ashley Summer Peck, daughter

Lindsey Nicole Peck, daughter

7. That as a direct and proximate result of the negligence of the defendant, Dunbar, Milby, Williams, Pittman & Vaughan, P.C., as aforesaid, the beneficiaries have suffered damages including but not limited to sorrow, mental anguish and solace, including the society, companionship, comfort, guidance, kindly offices and advice of the decedent, loss of income of the decedent, and services, protection, care and assistance provided by the decedent.

8. That as a direct and proximate result of the negligence of the defendants, Dunbar, Milby, Williams, Pittman & Vaughan, P.C., as aforesaid, the estate of the plaintiff's decedent has incurred expenses for the care, treatment and hospitalization of the decedent incident to the injuries resulting in his death, and reasonable funeral expenses.

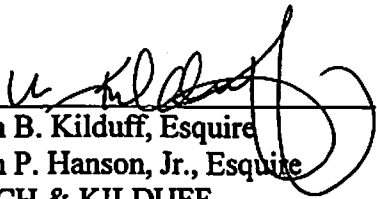
9. That on or about December 16, 1997, Lisa C. Peck qualified as administratrix of the estate of William R. Peck, Jr., deceased, a copy of which certificate is attached.

WHEREFORE, the plaintiff demands judgment against the defendants in the sum of SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000.00), prejudgment interest from the date of the plaintiffs' decedent's death and costs as aforesaid.

TRIAL BY JURY IS DEMANDED.

LISA C. PECK, Administratrix

By Counsel



William B. Kilduff, Esquire
William P. Hanson, Jr., Esquire
EMROCH & KILDUFF
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P. O. Box 6856
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Fax: 757-640-0924

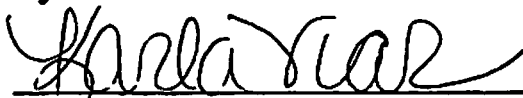
CLERK'S OFFICE
OF THE
Circuit Court of Chesterfield County, Virginia

This is to certify that on the 16th day of December, 1997, Lisa Christine Peck qualified before the Clerk of the Circuit Court of Chesterfield County as Administratrix of the estate of William Robert Peck, Jr., DECEASED, and gave bond as such in the amount of \$50,000.00 and that her powers as such are in full force and effect.

Given under my hand and seal this day, December 16, 1997.

JUDY L. WORTHINGTON, Clerk

By:



Deputy Clerk

File #97-691

VIRGINIA:

**IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING**

**LISA C. PECK, administratrix of
the Estate of William R. Peck, Jr., deceased,**

Plaintiff,

v.

Case No. LF-2314

**SAFWAY STEEL PRODUCTS, INC.,
HEK PLATFORMS & HOISTS, INC.
and**

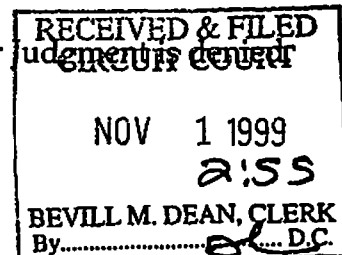
DUNBAR, MILBY, WILLIAMS, PITTMAN & VAUGHAN, P.C.,

Defendants.

**GROUND OF DEFENSE OF
SAFWAY STEEL PRODUCTS, INC.**

COMES NOW, the Defendant, Safway Steel Products, Inc. ("Safway"), by counsel,
and for its Grounds of Defense, subject to and reserving its Workers' Compensation Plea-
in-Bar, states as follows:

1. Paragraph 1 of Count One of Plaintiff's Motion for Judgment is denied.
2. Paragraph 2 of Count One of Plaintiff's Motion for Judgment is denied.
3. Paragraph 3 of Count One of Plaintiff's Motion for Judgment is denied.
4. Paragraph 4 of Count One of Plaintiff's Motion for Judgment is denied.
5. Paragraph 5 of Count One of Plaintiff's Motion for Judgment is denied.
6. Defendant Safway is without sufficient information with which to admit or
deny Paragraph 6 of Count One of Plaintiff's Motion for Judgment; therefore, it is denied.
7. Paragraph 7 of Count One of Plaintiff's Motion for



8. Paragraph 8 of Count One of Plaintiff's Motion for Judgment is denied.
9. Defendant Safway is without sufficient information with which to admit or deny Paragraph 9 of Count One of Plaintiff's Motion for Judgment; therefore, it is denied.
10. Paragraphs 1 through 3 of Count Two of Plaintiff's Motion for Judgment are denied.
11. Paragraph 4 of Count Two of Plaintiff's Motion for Judgment is denied.
12. Paragraph 5 of Count Two of Plaintiff's Motion for Judgment is denied.
13. Defendant Safway is without sufficient information with which to admit or deny Paragraph 6 of Count Two of Plaintiff's Motion for Judgment; therefore, it is denied.
14. Paragraph 7 of Count Two of Plaintiff's Motion for Judgment is denied.
15. Paragraph 8 of Count Two of Plaintiff's Motion for Judgment is denied.
16. Defendant Safway is without sufficient information with which to admit or deny Paragraph 9 of Count Two of Plaintiff's Motion for Judgment; therefore, it is denied.
17. Paragraphs 1 through 3 of Count Three of Plaintiff's Motion for Judgment are denied.
18. Paragraph 4 of Count Three of Plaintiff's Motion for Judgment is denied.
19. Paragraph 5 of Count Three of Plaintiff's Motion for Judgment is denied.
20. Defendant Safway is without sufficient information with which to admit or deny Paragraph 6 of Count Three of Plaintiff's Motion for Judgment; therefore, it is denied.
21. Paragraph 7 of Count Three of Plaintiff's Motion for Judgment is denied.
22. Paragraph 8 of Count Three of Plaintiff's Motion for Judgment is denied.

23. Defendant Safway is without sufficient information with which to admit or deny Paragraph 9 of Count Three of Plaintiff's Motion for Judgment; therefore, it is denied.

24. Paragraphs 1 through 3 of Count Four of Plaintiff's Motion for Judgment are denied.

25. Paragraph 4 of Count Four of Plaintiff's Motion for Judgment is denied.

26. Paragraph 5 of Count Four of Plaintiff's Motion for Judgment is denied.

27. Defendant Safway is without sufficient information with which to admit or deny Paragraph 6 of Count Four of Plaintiff's Motion for Judgment; therefore, it is denied.

28. Paragraph 7 of Count Four of Plaintiff's Motion for Judgment is denied.

29. Paragraph 8 of Count Four of Plaintiff's Motion for Judgment is denied.

30. Defendant Safway is without sufficient information with which to admit or deny Paragraph 9 of Count Four of Plaintiff's Motion for Judgment; therefore, it is denied.

31. Defendant Safway is without sufficient information with which to admit or deny all Paragraphs of Count Five of Plaintiff's Motion for Judgment; therefore, they are all denied.

32. Defendant Safway is without sufficient information with which to admit or deny all Paragraphs of Count Six of Plaintiff's Motion for Judgment; therefore, they are all denied.

33. Defendant Safway is without sufficient information with which to admit or deny all Paragraphs of Count Seven of Plaintiff's Motion for Judgment; therefore, they are all denied.

34. Defendant Safway is without sufficient information with which to admit or deny all Paragraphs of Count Eight of Plaintiff's Motion for Judgment; therefore, they are all denied.

35. Defendant Safway is without sufficient information with which to admit or deny all Paragraphs of Count Nine of Plaintiff's Motion for Judgment; therefore, they are all denied.

AFFIRMATIVE DEFENSES

1. Safway avers that the Motion for Judgment fails to state a viable claim against it or anyone under the applicable laws.

2. Safway avers that the claim against it is barred by the Virginia Workers' Compensation Act.

3. Safway avers that at all times relevant to this claim, its conduct in regard to the product and the conduct of others for whom it may be responsible was in reasonable conformity with the state of the art and the applicable standards.

4. Safway denies that the product was in a defective condition, was unsafe and/or unreasonably dangerous at the time of the rental, at the time it left its control, or at any other relevant time.

5. Safway avers that there was no reasonable reliance by the Plaintiff's decedent or anyone on any alleged warranties, express or implied.

6. Safway avers that it had no duty to warn the Plaintiff's decedent about the type of accident, injuries, defect and/or danger alleged in the Motion for Judgment.

7. Safway avers that any danger associated with the product and its component was open and obvious.

8. Safway avers that the Plaintiff's decedent and/or others failed to comply with the directions, instructions and/or warnings provided, which failure was the sole, or a proximate cause of the accident and the alleged injuries and damages.

9. Safway avers that the accident and any alleged damages claimed were in whole or in part the result of alteration, abuse and/or misuse of the product.

10. Safway avers that this claim is barred as to it because of the lack of privity between it and the Plaintiff's decedent.

11. Safway avers that any alleged warranties have been disclaimed and are limited so as to bar or limit the claim against it.

12. Safway avers that it was not given notice as required by § 8.2-607, *Code of Virginia*, 1950, as amended, and that it did not receive adequate and/or timely notice of the alleged breach of warranty, negligence, accident, injury, damage, loss and/or claim.

13. Safway will rely upon any and all other properly provable defenses to this action, including failure to mitigate injuries, damages, and losses, assumption of the risk, estoppel, waiver, release, statute of limitations, statute of repose, contributory negligence, unavoidable accident, certificate of user, learned intermediary, and any and all defenses available to it under the laws of the Commonwealth of Virginia, all of which it avers, as may be revealed by investigation, discovery, evidence at trial or otherwise, and reserves the right to amend its Grounds of Defense at any time it be so advised.

14. Plaintiff's decedent's claim or injuries were caused in whole or in part by other parties or entities over whom Safway had no control or duty to control.

WHEREFORE, the Defendant, Safway Steel Products, Inc., demands that this Motion for Judgment be dismissed against it, with prejudice, and that it be awarded its attorney's fees and costs herein expended.

TRIAL BY JURY IS DEMANDED.

SAFWAY STEEL PRODUCTS, INC.

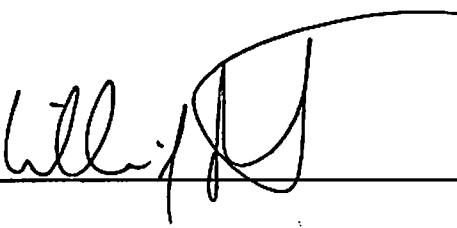
BY 

Of Counsel

William J. Pantele (V.S.B. No. 22860)
James C. Skilling (V.S.B. No. 27998)
Pamela M. Herrington (V.S.B. No. 42856)
BUTLER, MACON, WILLIAMS & PANTELE, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Telephone (804) 648-4848
Facsimile (804) 648-6814
Counsel for Safway Steel Products, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Grounds of Defense of Safway Steel Products, Inc. was mailed to William B. Kilduff, Esquire and William P. Hanson, Jr., Emroch & Kilduff, 3600 West Broad Street, Suite 700, P. O. Box 6856, Richmond, Virginia 23230-0856; and to L. Bradford Haskin, Esquire, First Union Bank Building, 500 East Plume Street, Suite 400, Norfolk, Virginia 23510, on this 1st day of November, 1999.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING

RECEIVED & FILED CIRCUIT COURT
NOV 1 1999
DEVILL M. DEAN, CLERK By..... D.C.

LISA C. PECK, administratrix of
the Estate of William R. Peck, Jr., deceased,

Plaintiff,

v.

Case No. LF-2314

SAFWAY STEEL PRODUCTS, INC.,
HEK PLATFORMS & HOISTS, INC.
and

DUNBAR, MILBY, WILLIAMS, PITTMAN & VAUGHAN, P.C.,

Defendants.

**WORKERS' COMPENSATION
PLEA-IN-BAR OF
SAFWAY STEEL PRODUCTS, INC.**

COMES NOW, the Defendant, Safway Steel Products, Inc. ("Safway"), by counsel,
and for its Workers' Compensation Plea-in-Bar, states as follows:

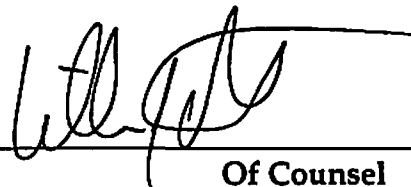
1. Plaintiff's decedent applied for and was awarded benefits under the Virginia Workers' Compensation Act and is, therefore, precluded from maintaining a common law action against his employer and any third parties, such as Safway, who conduct the employer's business. Plaintiff's decedent's claim is barred by the Virginia Workers' Compensation Act, including, but not limited to, *Virginia Code* § 65.2-307, 1950, as amended.

2. Because Plaintiff's decedent applied for and was awarded benefits under the Virginia Workers' Compensation Act, workers' compensation benefits shall be Plaintiff's decedent's sole remedy against Safway on the grounds that Safway was a statutory

employer of Plaintiff's decedent, who at the time of his death, was a statutory employee of Safway. Therefore, the Plaintiff's Motion for Judgment should be dismissed with prejudice as to Safway based upon the Virginia Workers' Compensation Act.

WHEREFORE, Safway Steel Products, Inc. respectfully requests that Plaintiff's Motion for Judgment be dismissed, with prejudice, and that it be awarded its attorney's fees and costs herein, and any further relief which the court deems appropriate.

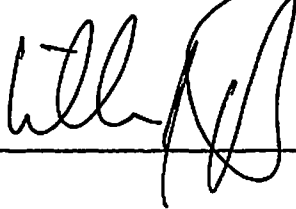
SAFWAY STEEL PRODUCTS, INC.

BY  _____
Of Counsel

William J. Pantele (V.S.B. No. 22860)
James C. Skilling (V.S.B. No. 27998)
Pamela M. Herrington (V.S.B. No. 42856)
BUTLER, MACON, WILLIAMS & PANTELE, P.C.
1309 East Cary Street, Second Floor
Richmond, Virginia 23219
Telephone (804) 648-4848
Facsimile (804) 648-6814
Counsel for Safway Steel Products, Inc.

CERTIFICATE OF SERVICE

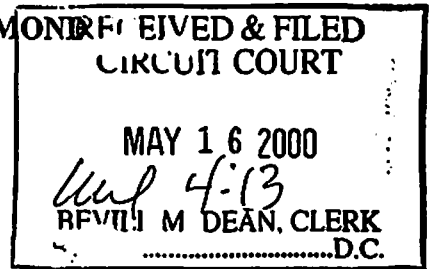
I hereby certify that a true and exact copy of the foregoing Workers' Compensation Plea-in-Bar of Safway Steel Products, Inc. was mailed to William B. Kilduff, Esquire and William P. Hanson, Jr., Emroch & Kilduff, 3600 West Broad Street, Suite 700, P. O. Box 6856, Richmond, Virginia 23230-0856; and to L. Bradford Haskin, Esquire, First Union Bank Building, 500 East Plume Street, Suite 400, Norfolk, Virginia 23510, on this 1st day of November, 1999.



VIRGINIA:

**IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building**

LISA C. PECK, Administratrix of
The Estate of William R. Peck, Jr.,
Deceased, Plaintiff,



V.

Case No: LF-2314-4

SAFWAY STEEL PRODUCTS, INC.
and
HEK PLATFORMS & HOISTS, INC.
and
DUNBAR, MILBY, WILLIAMS, PITTMAN & VAUGHAN, P.C., Defendants.

**PLAINTIFF'S SUPPLEMENTAL RESPONSES TO
SAFWAY STEEL PRODUCTS, INC.'S
REQUESTS FOR ADMISSION TO PLAINTIFF**

For her Responses to defendant, Safway Steel Products, Inc.'s Requests for Admissions, the plaintiff states and alleges as follows:

1 . Admit the document attached hereto as Exhibit 1 is a true and accurate copy of the Memorandum of Agreement for Payment of Compensation in a Fatal Case, which was filed with the Virginia Workers' Compensation Commission as a result of the plaintiff's decedent's fall of November 25, 1997, which is described in and forms the basis of the plaintiff's Motion for Judgment.

RESPONSE: Admit.

2. Admit the signature located on the bottom right of Exhibit 1, in the space designated "Principal Defendant", is that of the plaintiff, Lisa C. Peck.

RESPONSE: Admit.

3. Admit all of the information contained in Exhibit 1 is true and correct.

RESPONSE: Admit.

4. Admit the Virginia Workers' Compensation Commission entered an award for compensation benefits on behalf of the plaintiff, Lisa C. Peck, and her two daughters, against White Construction Company, Inc. and its workers' compensation insurer, as a result of the plaintiffs decedent's fall of November 25, 1997, which is described in and forms the basis of the plaintiff's Motion for Judgment.

RESPONSE: Admit.

5. Admit the document attached hereto as Exhibit 2 is a true and accurate copy of the Award entered by the Virginia Workers' Compensation Commission on May 29, 1998, against White Construction Company, Inc., and its workers' compensation insurer, on behalf of the plaintiff, Lisa C. Peck, and her two daughters, as a result of the plaintiffs decedent's fall of November 25, 1997, which is described in and forms the basis of the plaintiff's Motion for Judgment.

RESPONSE: Admit.

6. Admit the two-page document attached hereto as Exhibit 3 and titled "Commonwealth of Virginia Form of Agreement" is a true and accurate copy of the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503).

RESPONSE: Admit.

7. Admit the four-page document attached hereto as Exhibit 4 is a true and accurate copy of the bid proposal submitted by White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708,9503).

RESPONSE: Admit.

8. Admit the bid proposal submitted by White Construction Company, Inc. (Exhibit 4), is part of the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236,12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Admit.

9. Admit the 35-page document attached hereto as Exhibit 5 and titled "General Conditions of the Contract for Capital Outlay Projects", is a true and accurate copy of the General Conditions referenced in the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Admit.

10. Admit the "General Conditions of the Contract for Capital Outlay Projects", attached hereto as Exhibit 5, are a part of the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Admit.

11. Admit the four-page document attached hereto as Exhibit 6 and titled "Section 1000 - Special Conditions" is a true and accurate copy of the Special Conditions referenced in the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-127089503) (previously attached hereto as Exhibit 3).

RESPONSE: Admit.

12. Admit the four-page titled "Section 1000, Special Conditions", attached hereto as Exhibit 6, is a part of the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Admit.

13. Admit the 18-page document attached hereto as Exhibit 7 is a true and accurate copy of Change Order No. 2 to the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

14. Admit Change Order No. 2, attached hereto as Exhibit 7, is a part of the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708,9503) (previously attached hereto as Exhibit 3).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

15. Admit the nine-page document attached hereto as Exhibit 8 is a true and accurate copy of Change Order No. 4 to the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

16. Admit Change Order No. 4, attached hereto as Exhibit 8, is a part of the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

17. Admit the 18-page document attached hereto as Exhibit 9 is a true and accurate copy of Change Order No. 5 to the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

18. Admit Change Order No. 5, attached hereto as Exhibit 9, is a part of the contract between Virginia Commonwealth University and White Construction Company, Inc. for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) (previously attached hereto as Exhibit 3).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

19. Admit the four-page document attached hereto as Exhibit 10 and designated Contract #285-4 is a true and accurate copy of the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. for certain work described therein to be done by Safway Steel Products, Inc. on the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708,9503) and governed by White Construction Company, Inc.'s contract with Virginia Commonwealth University (previously attached hereto as Exhibit 3).

RESPONSE: Plaintiff admits that the document is a true and accurate copy of the subcontract.

SUPPLEMENTAL RESPONSE: Plaintiff admits that the documents are a true and accurate copy of the what is called a subcontract. Plaintiff is unable to admit the additional language as these involve questions of law.

20. Admit that, pursuant to its subcontract with White Construction Company, Inc. (previously attached hereto as Exhibit 10), Safway Steel Products, Inc. furnished, and erected on-site all scaffolding for the construction project known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503) per the contract document requirements.

RESPONSE: Plaintiff admits that Safway leased all scaffolding for the project, but plaintiff does not have sufficient information to admit the rest of this Request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admits that said work was done pursuant to the agreement.

21. Admit that, pursuant to its subcontract with White Construction Company, Inc. (previously attached hereto as Exhibit 10), Safway Steel Products, Inc. provided the labor for and completed 12 additional deck moves after the initial erection of the scaffolding.

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admits that said work was done pursuant to the agreement.

22. Admit that document attached hereto as Exhibit 11, entitled "Acord-Certificate of Liability Insurance" is a true and accurate copy of the Certificate of Insurance delivered by Safway Steel Products, Inc. to White Construction Company, Inc. pursuant to its subcontract with White Construction Company, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

23. Admit that Safway Steel Products, Inc. had a valid policy of worker's compensation insurance in place on November 25, 1997, the date of the plaintiff's decedent's fall.

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

24. Admit the document attached hereto as Exhibit 12 is a true and accurate copy of Change Order #1 to the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Exhibit 12 is a true and accurate copy of Change Order No. 1 to the agreement between White Construction Company and Safway Steel Products, Inc.

25. Admit Change Order #1 (previously attached hereto as Exhibit 12) is a part of the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Change Order No. 1 is a part of an agreement between White Construction Company and Safway Steel Products, Inc.

26. Admit that, pursuant to its obligations under Change Order # I (previously attached hereto as Exhibit 12), Safway Steel Products, Inc. furnished an additional 59 days of scaffold rental for Phase I and an additional 60 days of scaffold for Phase II per the plans and specifications for the scaffolding.

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

27. Admit the two-page document attached hereto as Exhibit 13 is a true and accurate copy of Change Order #2 to the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Exhibit 8 is a true and accurate copy of the Change Order 2 to the Agreement between White Construction Co., Inc. and Safway Steel Products, Inc.

28. Admit Change Order #2 (previously attached hereto as Exhibit 13) is a part of the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Change Order 2 is a part of the agreement between White Construction Co. and Safway Steel Products, Inc.

29. Admit that, pursuant to Change Order #2 (previously attached hereto as Exhibit 13), Safway Steel Products, Inc. furnished all labor and equipment necessary to erect stairs from Level 10 to Level 11 between Columns 6 and 7 for work on the replacement louver.

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

30. Admit the two-page document attached hereto as Exhibit 14 is a true and accurate copy of Change Order #2 to the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Exhibit 14 is a true and accurate copy of Change Order No. 2 to the agreement between White Construction Co., Inc. and Safway Steel Products, Inc.

31. Admit Change Order #2 (previously attached hereto as Exhibit 14) is part of the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Change Order No. 2 is a part of the agreement between White Construction Co. and Safway Steel Products, Inc.

32. Admit that, pursuant to Change Order #2 (previously attached hereto as Exhibit 14), Safway Steel Products, Inc. furnished Phase II scaffold for the Sanger Hall Wall Repair Project for an additional 16 days.

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

33. Admit the document attached hereto as Exhibit 15 is a true and accurate copy of Change Order #3 to the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Exhibit 15 is a true and accurate copy of the Change Order No. 3 to the agreement between White Construction Co., Inc. and Safway Steel Products, Inc.

34. Admit Change Order #3 (previously attached hereto as Exhibit 15) is part of the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Change Order No. 3 is part of the agreement between White Construction Co., Inc. and Safway Steel Products, Inc.

35. Admit that, pursuant to Change Order #3 (previously attached hereto as Exhibit 15), Safway Steel Products, Inc. furnished 43 days of intermediate/half-deck scaffold rental covering days 5 through 9, furnished an additional 43 days of Phase II scaffold rental, and provided labor for four full-deck moves, including half-decks at the penthouse, 12th, 11th, and 10th Levels, and provided labor for eight half-deck moves from Columns 5 through 9, on Levels 9, 8, 7, 6, 5, 4, 3, and 2.

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

36. Admit the two-page document attached hereto as Exhibit 16 is a true and accurate copy of Change Order #4 to the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Exhibit 16 is a true and accurate copy of the Change Order No. 4 to the agreement between White Construction Co., Inc. and Safway Steel Products, Inc.

37. Admit Change Order #4 (previously attached hereto as Exhibit 16) is a part of the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Change Order No. 4 is a part of the agreement between White Construction Co., Inc. and Safway Steel Products, Inc.

38. Admit that, pursuant to Change Order #4 (previously attached hereto as Exhibit 16), Safway Steel Products, Inc. furnished intermediate/half-deck scaffolding for Column lines 10 through 17, including rental for 37 days and five half-deck erections (moves), encompassing Levels 7, 6, 5, 4, and 3, and a one-time freight charge.

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Admit.

39. Admit the three-page document attached hereto as Exhibit 17 is a true and accurate copy of Change Order #5 to the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Exhibit 17 is a true and accurate copy of the Change Order No. 5 to the agreement between White Construction, Inc. and Safway Steel Products, Inc.

40. Admit Change Order #5 (previously attached hereto as Exhibit 17) is a part of the subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. (previously attached hereto as Exhibit 10).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Change Order No. 5 is a part of the agreement between White Construction Co., Inc. and Safway Steel Products, Inc.


41. Admit Safway Steel Products, Inc. provided on-site labor through its own employees for the erection and placement of the scaffold and all subsequent placements and/or deck moves for the duration of the construction projection (*sic*) known as Sanger Hall Wall Repair; Phase II (Project Code: 236-12708-9503).

RESPONSE: Plaintiff does not have sufficient information or knowledge to admit or deny this request and states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

SUPPLEMENTAL RESPONSE: Plaintiff admits that Safway Steel Products, Inc. provided on-site labor through its employees for the erection and placement of the scaffold and all subsequent placement and/or deck moves during the construction project known as Sanger Hall Wall Repair; however, plaintiff denies that employees of Safway Steel Products, Inc. were at the job site for the entire duration of the said project.

LISA C. PECK, Administratrix

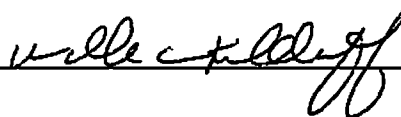
By Counsel



William B. Kilduff, Esquire
EMROCH & KILDUFF, LLP
3600 W. Broad Street, Suite 700
P.O. Box 6856
Richmond, VA 23230-0856
Phone: 804-358-1568
Fax: 804-353-5817

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing Supplemental Response to Defendant, Safway Steel Products, Inc.'s Requests for Admissions was faxed and mailed this 30 day of March, 2000, to William J. Pantele, Esquire, Butler, Macon, Williams & Pantele, 1309 E. Cary St., 2nd Floor, Richmond, VA 23219; and to John Carstens, Jordan, Coyne & Savits, 10486 Armstrong St., Fairfax, VA 22030; and to Stephan F. Andrews, Esquire, Wright, Robinson, Osthimer & Tatum, 411 E. Franklin St., 4th Floor, Richmond, VA 23219; and to L. Bradford Haskin, Esquire, First Union Bank Building, 500 East Plume Street, Suite 400, Norfolk, VA 23510.



COMMONWEALTH OF VIRGINIA

VIRGINIA WORKERS' COMPENSATION COMMISSION
1000 DMV DRIVE, RICHMOND, VIRGINIA 2322053
25VWC Claim No. 189-27-46

Memorandum of Agreement for Payment of Compensation in a Fatal Case

Carrier No. 302/IT-0236588/07Carrier WCAMC Contractors GSIA

NOTE.—This agreement when executed shall be filed promptly by the employer or his insurance carrier with the Commission.

Agreement entered into this 26th day of November, 1997, by and between
White Construction of P. O. Box 728, Chester, VA 23831
 (Name of Employer) (Address)
 and Lisa Peck of 10706 Timonium Dr., Chester, VA 23831
 (Name of principal dependent) (Address)
 for compensation due the dependents of William Robert Peck, Jr.
 (Name of Employer)

an employee of said employer who sustained an injury on the 25th day of November, 1997,
 as a result of an accident arising out of and in the course of his employment and which caused his death on the 25th day of
November, 1997.

This agreement is based on the following agreed facts:

Place of Accident Richmond, VA
 Cause of Accident Fell 9 stories from scaffolding
 Nature of Injury Fatal

EXHIBIT
1
ALL STATE LEGALAverage weekly wage at the time of injury was \$ 798.94That the following were ^{totally} _{partially} dependent on the deceased employee prior to the accident:

NAME	ADDRESS	DATE OF BIRTH	RELATIONSHIP TO DECEASED
<u>Lisa Peck</u>	<u>10706 Timonium Dr.</u>		<u>Wife</u>
<u>Ashley Summer Peck</u>	<u>" " "</u>	<u>11/01/88</u>	<u>Daughter</u>
<u>Lindsey Nicole Peck</u>	<u>" " "</u>	<u>10/27/02</u>	<u>Daughter</u>

VWC0014

Subject to the approval of the Virginia Workers' Compensation Commission the employer agrees to pay and the principal dependent to accept compensation for the benefit of the above named dependents, in equal proportions at the rate of \$ 513.00 per week, payable every two weeks for 500 weeks, unless subsequent conditions require a modification, and all costs of necessary medical, surgical and hospital attention and supplies incident to the injury and cost of burial expenses in the sum of \$ 5,000.00.

If dependency was partial, the following statements must be completed:

Total amount necessary to support dependents during ^{year} _{month} prior to accident was \$ 00The deceased contributed for the ^{year} _{month} prior to the accident to the support of said dependent the sum of \$ 00

FEB 03 1998

Witness _____

Address _____

Witness James H. MooreAddress 16943 Summer Arbor LnChester VA 238

42

Employer David C. Peck

By _____

(Official Title)

Principal
Dependent David C. Peck

722

COMMONWEALTH OF VIRGINIA

VIRGINIA WORKERS' COMPENSATION COMMISSION
1000 DMV DRIVE, RICHMOND VA 23220-2036

WILLIAM R PECK, Claimant

v. VWC File No. 189-27-46 Award Entered:
Carrier's No. 302LT023658897 May 29, 1998
DOA: 11/25/97

WHITE CONST CO INC, Employer
WCAMC CONTRACTORS GROUP SELF-INS ASSOC, Insurer

AWARD

The Virginia Workers' Compensation Commission has approved the Memorandum of Agreement entered into on November 26, 1997.

Awards are entered against WHITE CONST CO INC and WCAMC CONTRACTORS GROUP SELF-INS ASSOC by the Virginia Workers' Compensation Commission on behalf of the following:

<u>Dependent's Name/Relationship</u>	<u>Weekly Amount</u>
Lisa Peck/Wife	\$171.00
Ashley Summer Peck/Daughter	171.00
Lindsey Nicole Peck/Daughter	171.00

beginning on November 26, 1997 and continuing for 500 weeks or until future conditions require modification. Benefits are payable every two weeks to Lisa Peck.

As provided by §65.2-517, Code of Virginia, benefits for Lisa Peck shall end upon death or remarriage. A person receiving benefits is required by law to immediately notify the insurance company or self-insured employer of any remarriage. Benefits for a child shall end upon reaching the age of 18 years old or 23 years old if enrolled as a full-time student in an accredited educational institution. The insurance company or self-insured employer must immediately be notified when enrollment in school is less than full time.

The cost of all reasonable and necessary medical expenses related to the fatal injury, burial expenses not to exceed \$5,000.00 and transportation cost up to \$500.00 are also awarded.

VIRGINIA WORKERS' COMPENSATION COMMISSION

cc: WCAMC CONTRACTORS GROUP SELF-INS LISA PECK
ASSOC 10706 TIMONIUM DR
PALMER & CAY CARSWELL CHESTER VA 23831
10900 NUCKOLS RD #205
GLEN ALLEN VA 23060

CAC/sjw



VWC0005

**COMMONWEALTH OF VIRGINIA
FORM OF AGREEMENT**

This agreement entered into this 17th day of December 1996, by White Construction Company, hereinafter called the "Contractor" and Virginia Commonwealth University, hereinafter called the "Owner".

WITNESSETH that the Contractor and the Owner, in consideration of premises and of the mutual covenants, considerations and agreements herein contained, agree as follows:

STATEMENT OF WORK: The Contractor shall furnish all labor and materials and perform all work for The Owner (Agency Code: 236) in strict accordance with the specifications dated October 20, 1996, for Sanger Hall; Wall Repair; Phase II (Project Code: 236-12708-9503) and the drawings listed therein.

CONTRACT DOCUMENTS: This agreement shall consist of this Form of Agreement, the bid proposal submitted by the Contractor, the General Conditions and Special Conditions attached to the Owner's Invitation to Bid and the Owner's specifications and the drawings listed therein referred to above, together with all modifications thereof, all of which documents are incorporated herein.

TIME FOR COMPLETION: The work shall be commenced on a date to be specified in a written order of the Owner and shall be completed within 240 calendar days from and after the said date.

COMPENSATION TO BE PAID TO THE CONTRACTOR: The Owner will pay and the Contractor will accept in full consideration for the performance of the Contract the sum of Six Hundred Fifty Seven Thousand Two Hundred Seventeen and NO/100 ----- Dollars (\$657,217.50).

THE FOLLOWING PROVISIONS of Section 11-51 of the Code of Virginia are included in this contract:

"During the performance of this contract, the contractor agrees as follows:

"a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the 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.

"b. 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.

"c. 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.



DATE: December 4, 1996

(SUBMIT IN DUPLICATE)

PROJECT: SANGER HALL WALL REPAIR, PHASE II
MCV CAMPUS
VIRGINIA COMMONWEALTH UNIVERSITY
RICHMOND, VIRGINIA

TO: Arnold Teren, Director
Construction & Inspection
Virginia Commonwealth University
Richmond, Virginia

In compliance with your Advertisement for Bids, the undersigned bidder proposes to furnish all labor and materials and perform all work necessary for construction of this project in accordance with the contract documents dated October 20, 1996, including Addenda noted below, as prepared by Dunbar, Milby, Williams, Pittman & Vaughan, 611 Moorefield Park Drive/Suite A, Richmond, Virginia 23236 for the consideration of the following amounts:

BASE BID:

Part A: Selective demolition of brick masonry parapets and portions of brick masonry wall panels, selective removal and replacement of damaged individual brick, replacement of metal in-wall flashings and selected metal shelf angles, construction of expansion relief joints in masonry panels and parapets, application of sealant at new and existing resilient joints; and removal of asbestos-containing building products within, or attached to, masonry walls and parapets to be removed (forty (40) cubic yards).

Lump sum price for all work described in the Contract Documents:

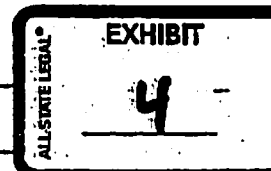
SIX HUNDRED TWENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$627,500⁰⁰).

Base Bids for PARTS B, C, and D shall be based on the estimated quantities indicated to be provided, complete and in accordance with the applicable portions of the plans and specifications. Payment amounts for each of these items will be based on the actual quantities authorized, provided and approved; times the unit costs indicated by the bidder. The final contract amount shall be adjusted upward or downward based on the actual payment amounts versus the bid amounts for PARTS B, C, and D.

Part B: Additional removal, repair, and installation of coping stones, where authorized or directed, (price per coping stone). (Final amount shall be adjusted upward or downward based on actual quantity authorized.)

Estimated Quantity of 10 @ \$195.50 Per Stone = \$1,955.00

ONE THOUSAND NINE HUNDRED FIFTY FIVE DOLLARS (\$1,955.00)



White Construction Company, Inc.

Part C: Additional removal and replacement of brick (including AB removal as specified), where authorized or directed, (price per square foot). (Final amount shall be adjusted upward or downward based on actual quantity authorized.)

Estimated Quantity of 100 S.F. @ \$ ^{\$1} 62.00 Per S.F. = \$ ^{\$1} 6,200.00

Six THOUS. TWO HUND. ⁰⁰ DOLLARS (\$ 6,200.00).

Part D: Additional removal, repair, and reinstallation of vertical limestone panels, where authorized or directed, (price per panel). (Final amount shall be adjusted upward or downward based on actual quantity authorized.)

Estimated Quantity of 30 @ \$ ^{\$1} 718.75 Per Panel = \$ 21,562.50

Twenty ONE THOUS. FIVE HUN SIXTY TWO ⁵⁰ DOLLARS (\$ 21,562.50).

TOTAL BASE BID (A+B+C+D) ^{Six THOUS. FIFTY SEVEN THOUS. TWO HUN SIXTY TWO ⁵⁰} DOLLARS (\$ 657,217.50).

Contract awarded will be based on the TOTAL BASE BID AMOUNT SHOWN.

TIME:

The undersigned understands that time is of the essence and agrees that the time for substantial completion of the entire project shall be Two Hundred Forty (240) calendar days from the date of commencement of the work as specified in the Notice to Proceed. Final completion shall be achieved within Thirty (30) consecutive calendar days after substantial completion. The bidder has relied upon the following public historical climatological records: Richmond International Airport Data Sheets for Richmond, Virginia.

ADDENDA:

We acknowledge the receipt of Addenda One (11-12-96)

Clarification #1

CERTIFICATIONS:

IMMIGRATION REFORM AND CONTROL ACT OF 1986: The undersigned certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

DISQUALIFICATION OF CONTRACTORS: By signing this bid or proposal, the undersigned certifies that this person/firm/corporation is not currently barred from bidding on contracts by any agency of the Commonwealth of Virginia, nor is this person/firm/corporation a part of any firm/corporation that is currently barred from bidding on contracts by any agency of the Commonwealth of Virginia. We have attached an explanation of any previous debarment(s) and copies of notice(s) of reinstatement(s).

White Construction Company, Inc.

If notice of acceptance of this bid is given to the undersigned, the undersigned will execute and deliver a contract in the prescribed form within fifteen (15) calendar days after the contract has been presented to him for signature. The required Payment and Performance Bonds and Certificate of Insurance shall be delivered to the Owner along with the signed contract.

Contractor Class A
 Virginia License/Registration No. 034952A
 Valid until 8-31-97 (date)
 Registration Title or Specialty General Contractor

Either the undersigned or one of the following individuals, if any, is authorized to modify this bid prior to the deadline for receipt of bids by writing the modifications and in signing his name on the face of the bid, on the envelope in which it is enclosed, on a separate document, or on a document which is faxed to the Owner or by sending the Owner a telegraphic message.

- 1) Loyd P. White, Jr.
- 2) F. Scott Moyer
- 3) Mark Fields

I certify that the firm name given below is the true and complete name of the bidder and that the bidder is legally qualified and licensed by the Commonwealth of Virginia, Department of Commerce, State Board for Contractors, to perform all work included in the scope of the Contract.

Bidder White Construction Company, Inc.

(Name of Firm)

By (signature) 

(Typed Name) Loyd P. White, Jr.

Title President

Business Address:

1305 W. Hundred Road

P.O. Box 728

Chester, VA 23831

For Partnership (Names of Partners):

For Corporation, list State of Incorporation:

Virginia

(Seal)

END BID FORM



ASBESTOS REMOVAL PROJECT DESIGN

SANGER HALL WALL REPAIR PHASE II ASBESTOS ABATEMENT Clarification #1

Location:

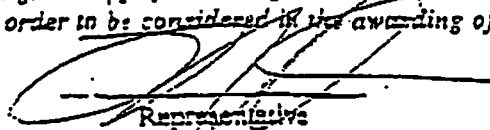
*Sanger Hall,
1101 East Marshall St.
Richmond, Virginia.*

General Description:

The abatement scope of work shall include the removal of asbestos-containing materials from the above listed structure as per the conditions set forth by the Asbestos Removal Project Design titled "Sanger Hall Wall Repair Phase II Asbestos Abatement", dated October 1, 1996. The following clarifications have been issued to provide additional information regarding acceptable work procedures in relation to this project:

- 1. Removal Note 7.A.1.a: Removal of all brick courses in association with shelf angle repair shall be performed under the conditions specified in the asbestos removal project design by a licensed Virginia asbestos abatement contractor.*
- 2. Removal Note 7.B.1.a,b,c: Actual penetration of brick courses during vertical joint development must be performed by asbestos licensed personnel in accordance with the conditions set forth in the project specifications. Initial development of vertical joints may be performed by nonasbestos-licensed personnel if cutting is stopped at a minimum 1/4" prior to penetrating brick courses. final cutting of each vertical joint would thus be completed by properly trained/protected asbestos workers.*

A signed copy of this clarification must be included with contractor's bid in order to be considered in the awarding of this contract.


Representative

White Construction Company, Inc.

Contractor

COMMONWEALTH OF VIRGINIA



GENERAL CONDITIONS OF THE CONTRACT FOR CAPITAL OUTLAY PROJECTS

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VCU 000105

Rev: 12/01/91

Notice: All written notices, demands, instructions, claims, approvals and disapprovals required to obtain compliance with the Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the Contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox.

Notice to Proceed: A written notice given by the Owner to the Contractor (with a copy to A/E) 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.

Owner: The public body, i.e., an agency, institution, or department, with whom the Contractor has entered into a contractual agreement and for whom the Work or services is to be provided.

Project Inspector: One or more individuals employed by the Owner to inspect the Work and/or to act as clerk of the works to the extent required by the Owner. The Owner 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.

Submittals: All drawings, diagrams, illustrations, schedules and other data required by the Contract Documents 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 or equipment for some portion of the Work.

Subcontractor: An individual, partnership or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of the Work. It includes one who provides on-site labor but does not include one who only furnishes or supplies materials for the project.

Substantial Completion: The Work which is sufficiently complete, in accordance with the Contract Documents, so that the project can be utilized by the Owner for the purposes for which it is intended.

Supplemental General Conditions: The part of the Contract Documents which amends or supplements the General Conditions.

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

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

Work: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

VCU 000107

Rev: 12/01/91

- (g) The Contractor, if not licensed as an asbestos abatement contractor or an RFS contractor in accordance with Section 54.1-514, Code of Virginia, shall have all asbestos related Work performed by subcontractors who are duly licensed as asbestos contractors or RFS contractors as appropriate for the Work required.

4. NONDISCRIMINATION

The following requirements of Section 11.51 of the Code of Virginia shall be applicable:

- "1. During the performance of this Contract, the Contractor agrees as follows:
 - "(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the 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.
 - "(b) 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.
 - "(c) 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.
- "2. The Contractor will include the provisions of the foregoing paragraphs (a), (b) and (c) in every subcontract or purchase order of over ten thousand dollars (\$10,000), so that provisions will be binding upon each Subcontractor or vendor."

5. CONDITIONS AT SITE

- (a) The Contractor shall have visited the site prior to bidding and is 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, as a result of failure to have done so, will not be considered by the Owner.
- (b) If, in the performance of the Contract, hidden physical conditions of a building being modified are exposed revealing unusual or materially different conditions than those ordinarily encountered or inherent in work of this nature, or if subsurface or latent conditions at the site are found which are materially different from those frequently present in the locality, from those indicated in the Contract Documents, or from those inherent in work of the character required by the Contract, the Contractor must report such conditions to the Owner and to the Architect/Engineer before the conditions are disturbed. Upon such notice, or upon his own observation of such conditions, the Architect/Engineer shall promptly make such changes in the Contract Documents as he finds necessary to conform to the different conditions. Any change in the cost of the Work or the time needed for completion must be requested pursuant to Sections 38, 39 and/or 43 of these General Conditions.
- (c) If the Contractor, during the course of the project, observes the existence of any material which it knows to be hazardous to human health, the Contractor shall promptly notify the Owner. The Owner 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 Owner.

VCU 000109

Rev: 12/01/91

8. CONTRACT SECURITY

- (a) Except for contracts of less than one hundred thousand dollars (\$100,000), the Contractor shall deliver to the Owner 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 authorized 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 Owner for the entire amount of the bond. Sureties shall be selected by the Contractor, subject to approval by the Owner. No payment on the Contract shall be due and payable to the Contractor until the bonds have been approved by the Owner and the Office of the Attorney General of Virginia. In order to facilitate review of the bonds by the Office of the Attorney General, prior to execution of the bonds by the surety, the power of attorney from the surety company to its agent who executes the bond shall be recorded in the Office of the Clerk of Court for the City of Richmond, Virginia, at the John Marshall Court Building, 800 East Marshall Street, except when the Owner is one of the following, in which case the power of attorney must be recorded with the Clerk of Court in the place shown:

<u>OWNER</u>	<u>PLACE OF RECORDATION</u>
University of Virginia	City of Charlottesville
Old Dominion University	City of Norfolk
Virginia Polytechnic Institute and State University	County of Montgomery

- (b) For the purposes of all Standard Labor and Material Payment Bonds entered into, the term "subcontractors" as used in §11-58 A.2. of the Code of Virginia is interpreted to mean any contractors who participated in the prosecution of the Work undertaken by the Contractor (referred to in §11-5 A.2. of the Code of Virginia as the "prime contractor"), whether such contractor had a direct contract with the Contractor (prime contractor) or whether there were one or more other intervening subcontractors contractually positioned between it and the Contractor (prime contractor).
- (c) See Section 11-61 of the Code of Virginia, for alternative forms of security for payment and/or performance bonds.

9. SUBCONTRACTS

- (a) The Contractor shall as soon as practicable after the signing of the Contract, notify the Owner and Architect/Engineer in writing of the names of Subcontractors proposed for the principal parts of the Work and of such others as the Architect/Engineer may direct. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object to as unsuitable. Neither the Owner nor the Architect/Engineer shall direct the Contractor to contract with any particular Subcontractor unless provided in the specifications or Bid form.
- (b) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values 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.

VCU 000111

Rev: 12/01/91

- (d) The Asbestos Contractor or Subcontractor, as the case may be, shall provide occurrence basis liability insurance with asbestos coverages in an amount not less than \$1,000,000 and shall name the following as additional insureds: The Commonwealth of Virginia, its officers, its employees and its agents; the Architect/Engineer (if not the Asbestos Project Designer); and the Contractor (where the asbestos work is being performed by the Asbestos Subcontractor).

12. INSURANCE FOR OWNER AND CONTRACTOR

- (a) The Contractor, at his cost, shall effect and maintain in the names of the Owner and the Contractor "all-risk" builders risk insurance (or fire, extended coverage, vandalism and malicious mischief insurance, if approved by the Owner and the Director, Division of Engineering and Buildings) upon the entire structure or structures on which the Work of this Contract is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof. Such insurance may include a deductible provision if the Owner so provides in the Supplemental General Conditions, in which case the Contractor will be liable for such deductions, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee, for whom it may concern. The Owner shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with the Owner no later than thirty (30) days following the award of the Contract. In the event of cancellation of this insurance, not less than thirty (30) days prior written notice must be sent to the Owner. A copy of the policy of insurance shall be given to the Owner upon demand.
- (b) The value of the builder's risk insurance shall exclude the costs of excavations, backfills, foundations, underground utilities and sitework. Certain projects such as renovations and interior modifications may be excluded from the requirements of this section, upon recommendation of the Owner and approval of the Director of the Division of Engineering and Buildings, and so provided in the Supplemental General Conditions.
- (c) Any insurance provided through the Department of General Services, Division of Risk Management for construction, additions or renovations will not extend to Contractor's nor Subcontractors' buildings, equipment, materials, tools or supplies unless these items are to become property of the Owner upon completion of the Project.

13. TAXES

The Contractor shall, without additional expense to the Owner, 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. If the State Building Official elects to have the local building official inspect the Work as provided by Section 36-98.1 of the Code of Virginia, the Owner will pay the resulting fees to the local building official.

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 and save the Owner, its officers, agents and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the specifications or drawings 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 drawings 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 Owner and the Architect/Engineer. The Owner may direct that some other invention, process,

defective Work and deviations from the Contract Documents, for rejecting the same, and for recommending to the Owner suspension of the Work when necessary to prevent defective Work from proceeding or being covered.

16. INSPECTION

- (a) All material and workmanship shall be subject to inspection, examination and test by the Owner and its Architect/Engineer at any and all times during manufacture and/or construction. The Architect/Engineer shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in Section 41 of these General Conditions, the Contractor and surety being liable for any damage to the same extent as provided in Section 41 for termination thereunder.
- (b) Jobsite inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting.
- (c) Should it be considered necessary or advisable by Owner or the Architect/Engineer at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or his Subcontractors, he shall defray all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing and Contractor's cost of material and labor necessary for replacement shall be paid to the Contractor and he shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time.
- (d) The Project Inspector will recommend to the Architect/Engineer and the Owner that the Work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.
- (e) The Project Inspector has no authority to and shall not:
 - (1) Authorize deviations from the Contract Documents;

- (c) The Contractor shall be fully responsible to the Owner for all acts and omissions of all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work just as the Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between Owner or Architect/Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or Architect/Engineer 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 divisions and sections of Specifications and the identification of any Drawings shall not control 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) The Contractor is responsible for the sequencing, scheduling and coordinating of the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. Within two (2) weeks after signing the Contract, unless otherwise extended by the Owner at the time of the signing of the Contract, the Contractor shall prepare and submit to the Owner through the Architect/Engineer a preliminary schedule for accomplishing the Work based upon the completion time stated in the Contract. A fully complete progress schedule for accomplishing the work must be submitted in like manner no later than sixty (60) days after signing the Contract. No progress payments will be payable to the Contractor until after it has submitted a preliminary schedule which is acceptable to the Owner. Neither the second progress payment nor any subsequent payment shall be payable to the Contractor until it has submitted a fully complete progress schedule.

Failure to provide a satisfactory preliminary or final schedule for accomplishing the work within the time provided above shall be a breach of contract for which the Owner may terminate the Contract in the manner provided in Section 41 of these General Conditions. Both the preliminary schedule and the final schedule for accomplishing the Work shall be of the type set forth in subparagraph I or II below, as appropriate:

- I. For Contracts with a price of \$1,500,000 or less, a bar graph schedule will satisfy the above requirement. The schedule shall indicate the estimated starting and completion dates for each major element of the work. The actual progress of those elements of the work will be reported monthly to the Owner through the Architect/Engineer at the time of submission of the request for payment. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor must indicate in writing what measures he is taking and plans to take to bring each such element back on schedule and to insure that the time of completion is not exceeded.
- II. For Contracts with a price over \$1,500,000, a Critical Path Method (CPM) schedule shall be utilized to control the planning and scheduling of project. The CPM schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor.

CPM Schedule: The working plan and schedule will be developed in the form of a CPM network diagram using the Contractor's logic and time estimates. The network shall be in the time-scaled precedence format. The network diagram shall be drawn or plotted with activities grouped or zoned by work area or subcontract as opposed to a random (or scattered) format.

- (1) Should the Contractor's monthly progress report indicate delays such that a CPM recovery schedule is required;
 - (2) Should the CPM schedule sorted by early finish show the Contractor to be thirty (30) or more days behind schedule at any time during construction up to thirty (30) days prior to scheduled substantial completion date;
 - (3) Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of the Architect/Engineer or the Owner, are of a major nature.
- (e) The Contractor shall prepare a schedule satisfactory to the Architect/Engineer and the Owner fixing the dates for the beginning and completion of the placing of orders for and the manufacture, the testing and the installation of materials, supplies and equipment, which schedule shall be subject to change from time to time in accordance with the progress of the work. On those projects requiring a CPM schedule, the schedule required by this paragraph shall be integrated into the CPM network.

20. SCHEDULE OF VALUES AND CERTIFICATE FOR PAYMENT (CO-12)

- (a) Before submittal of the first partial payment request under the Contract, the Contractor shall prepare for the review and approval of the Architect/Engineer and the Owner, a schedule of the estimated values listed by trades or by specification sections of the Work, totaling the amount of the Contract. Where the total project has multiple parts or phases, the Contractor shall prepare appropriate schedules of values to facilitate reviews and justifications for payments.
- (b) If the Contractor requests, or intends to request, payment for materials stored in an approved and secure manner, the Schedule of Values must indicate the amount for labor and the amount for materials, and in a supplement thereto must include an itemized list of materials for that trade or work section. The material breakdown shall be in sufficient detail to allow verification of the quantities required for the project, the quantities delivered, the Work completed, and the quantities stored on or off the site.
- (c) The "value of work completed" portion of the form shall be completed, the Contractor's certification signed and appropriate substantiating material attached to each request for payment.
- (d) The labor progress for any item shall be calculated based upon the percentage of Work complete up thru fifty percent (50%). Thereafter, the evaluation of labor progress will be based upon the effort required to complete that item or task. The material progress shall be calculated as the dollar cost of materials used in relationship to the amount estimated as necessary to complete a particular element of Work. When calculating material progress, credit shall be given for installed material as well as that stored on the site and any material stored off site which has been certified by the Architect/Engineer in accordance with Section 36 of these General Conditions.

21. ACCESS TO WORK

The Architect/Engineer, the Owner, the Owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

- (g) **As-Built Drawings:** The Contractor shall maintain at the site for the Owner one copy of all drawings, specifications, addenda, approved shop or setting drawings, change orders and other modifications (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 Architect/Engineer, the Owner, the Project Inspector, the Owner's other inspectors and to the Owner's testing personnel. These "As-Built Drawings" shall be neatly and clearly marked in color during construction to record all variations from the drawings 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.
- (h) **Record Drawings:** Upon completion of the Work and prior to the final inspection, the Contractor shall deliver to the Architect/Engineer, for preparation of the Record Drawings, one complete set of "As-Built Drawings" referred to in the preceding subsection.

24. SUBMITTALS

- (a) Shop drawings, setting drawings, product data and samples generated by the Contractor for review or approval by the Architect/Engineer shall be known as submittals. The Contractor shall submit a listing of all submittals required by the Architect/Engineer 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 Architect/Engineer.
- (b) Submittals shall be forwarded to the Architect/Engineer for approval if required by the specifications or if requested by the Architect/Engineer. 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) Written submittals shall be forwarded in six (6) copies (unless otherwise specified) accompanied by a letter of transmittal which shall list the submittals, the specification numbers applicable to each, and the date shown on each submittal. Submittals shall be complete in every respect and bound in sets. Clearly marked on each submittal shall be each item, component and/or optional feature proposed to be incorporated into the project with a cross reference to the drawings or specifications needed to identify the use for which it is intended.
- (d) 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. The Contractor shall be responsible for checking all dimensions and coordinating all materials and trades to insure that the materials proposed will fit in the space available and be compatible with other material provided.
- (e) Contractor shall stamp each sheet of submittal with the Contractor's review stamp. Data submitted in a bound volume or on one sheet printed on two sides, may be stamped on the front of the first sheet only. The Contractor's review stamp shall be worded as follows:

The equipment and material shown and marked in this submittal is that proposed to be incorporated into this Project, is in compliance with the Contract drawings and specifications unless otherwise shown in bold face type or lettering and listed on a page or pages headed "DEPARTURES FROM DRAWINGS AND SPECIFICATIONS", and can be installed in the allocated spaces.

Reviewed by _____

Date _____

26. EQUALS

- (a) Unless otherwise stated in the specifications, the name of a certain brand, make or manufacturer is to denote the characteristics, quality, workmanship, economy of operation and suitability for the intended purpose of article desired, but does not restrict bidders to the specific brand, make, or manufacturer; it is set forth to convey to the Contractor the general style, type, character and quality of article specified.
- (b) 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 product which in the opinion of the Architect/Engineer is the equal of that specified, considering quality, capabilities, workmanship, economy of operation, useful life, compatibility with design of the work and suitability for the intended purpose will be accepted unless rejected by the Owner as not being equal.
- (c) The Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equivalent product which it uses. The necessary changes shall be made at the Contractor's expense.

27. AVAILABILITY OF MATERIALS

If material specified in the Contract Documents is not available on the present market, alternate materials may be proposed by the Contractor through the Architect/Engineer for approval of the Owner.

28. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor 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 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 AND WORKMANSHIP

- (a) Unless otherwise specifically provided in this contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition. The Contractor shall furnish to the Architect/Engineer 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 required by this Contract, 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.
- (b) Unless specifically approved by the Owner or required by the specifications, the Contractor shall not incorporate any materials into the Work containing asbestos or any material known by the Contractor to contain a substance known to be hazardous to health when the building is occupied by the Owner. If the Contractor becomes aware that a material required by the specifications contains asbestos, it shall notify the Owner and the Architect/Engineer immediately and shall take no further steps to acquire or install any such material without first obtaining Owner approval.

31. USE OF PREMISES AND REMOVAL OF DEBRIS

- (a) The Contractor shall:
- (1) Perform his Contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the Work of any other 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 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 his work required to make the same conform to the drawings and specifications, and except with the consent of the Architect/Engineer not to cut or otherwise alter the work of any other contractor. The Contractor shall not damage or endanger any portion of the Work or premises, 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 of the work 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 a licensed landfill or otherwise as required by law.
- (d) The Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment, 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 thoroughly clean all glass installed under the Contract including the removal of all paint and mortar splatters and other defacements. If a Contractor fails to clean up at the completion of the Work, the Owner may do so and charge for costs thereof to the Contractor in accordance with Section 10 (b) of these General Conditions.
- (e) During and at completion of the Work, the Contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the Contract Documents.

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 drawings and specifications. Crushed rock, paving and other road materials from temporary roads shall not be left on the building site unless permission is received from the Owner to bury the same at a location and depth approved by the Owner.

pay meeting and may approve any or all of the estimate of work for payment. In preparing estimates, the material delivered on the site and preparatory work done shall be taken into consideration, if properly documented as required by Section 20 of these General Conditions, or as may be required by the Architect/Engineer so that quantities may be verified. In addition to material delivered on the site, material such as large pieces of equipment and items purchased specifically for the project, but stored off the site within the Commonwealth of Virginia, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested:

- (1) The Contractor must notify the Owner in writing, at least ten (10) days prior to the submission of the payment request, through the Architect/Engineer, that specific items will be stored off site in a designated secured place within the Commonwealth of Virginia. The Schedule of Values must be detailed to separately indicate both the value of the material and of the labor/installation for trades requesting payment for stored materials. The Contractor warrants by giving such notification and by requesting payment for material stored off site, that the storage location is safe and suitable for the type of material stored and he agrees that loss of materials stored off the site shall not relieve him of the obligation to furnish these types and quantities of materials for the project and on a schedule to meet the time completion requirements of the Contract Documents, subject to Section 43 of these General Conditions.
 - (2) Such notification, as well as the payment request, shall:
 - (a) itemize the quantity of such materials, and document with invoices the cost of said materials,
 - (b) indicate the identification markings used on the materials. Such markings shall clearly reference the materials to the particular State project.
 - (c) State the specific location of the materials. Said location must be within reasonable proximity to the job site within the Commonwealth of Virginia.
 - (d) State 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 is agreeable to such payment.
 - (e) Certify that adequate all-risk insurance has been obtained by the Contractor on the materials. Such insurance shall be in the name of the Owner and the Contractor.
 - (3) The Architect/Engineer shall indicate, in writing, to the Owner that submittals for such materials have been reviewed and meet the requirements of the drawings and specifications of the Contract Documents, that the stored materials meet the requirement of the drawings and specifications, and that such material conforms to the approved submittals.
 - (4) The Owner, through the Architect/Engineer, shall notify the Contractor in writing of his agreement to prepayment for materials.
 - (5) The Contractor shall notify the Owner in writing, through the Architect/Engineer, 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, including equipment, whether stored on or off the job site, which are not scheduled for incorporation into the Work within the six months next

- (h) Unless there is a dispute about the compensation due to the Contractor, defects in the Work, quality of the Work, compliance with the Contract Documents, completion itself, or claims by the Owner, or other matters in contention between the parties, then within thirty (30) days after receipt and acceptance of the Schedule of Values and Certificate for Payment in proper form at the monthly pay meeting, which shall be considered the receipt date, and, in the case of a final payment, receipt of a Certificate of Completion signed by the Architect/Engineer, the Owner shall pay to the Contractor the amount approved by the Architect/Engineer, less all prior payments and advances whatsoever to or for the account of the Contractor. 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 Owner, except in instances where further appropriations are required by the General Assembly or where the issuance of further bonds is required, in which case, payment shall be made within thirty (30) days after the effective date of such appropriation or within thirty (30) days after the receipt of bond proceeds by the Owner. All prior estimates and payments including those relating to extra work may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any request for payment (CO-12) by the Contractor contains a defect or impropriety, the Owner 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 Request for Payment by the Owner from the Architect/Engineer.
- (i) Interest shall accrue on all amounts owed by the Owner to the Contractor which remain unpaid fifteen (15) 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 fifteenth 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 Owner and to calculate to the satisfaction of the Owner the interest due. In no event shall the rate of interest charge exceed the rate of interest established pursuant to §58-1160 of the Code of Virginia. No interest shall accrue when payment is delayed because of disagreement between the Owner and the Contractor regarding the quantity, quality or timeliness of the Work, including, but not limited to, all compliance with Contract Documents or the accuracy of any Request for Payment received. The 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. This shall not 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 Owner for deductive change orders or to amounts due on any claims by the Owner. The date of mailing of any payment by the U.S. Mail is deemed to be payment to the addressee.
- (j) The acceptance by the Contractor of the final payment shall be and operate as a release to the Owner of all claims by the Contractor and of all liability to the Contractor whatever, including liability for all things done or furnished in connection with this Work.
- (k) No certificate for payment issued by the Architect/Engineer, and no payment, final or otherwise, nor partial or entire use or occupancy of the Work by the Owner, shall be an acceptance of any Work or materials not in accordance with this Contract, nor shall the same relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor or his Surety from any obligation under the Contract or the Standard Performance Bond and the Standard Labor and Material Payment Bond.

- (1) By a mutually agreed change to the Contract price and/or time allowed for completion of the Work. 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. (See (d) and (e) below)
 - (2) By using unit prices and calculating the number of net units of Work in each part of the Work which is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices.
 - (3) By ordering the Contractor to proceed with the change to the Work and to keep and present, in such form as the Owner may direct, an accurate itemized account of the cost of the changes to the Work, both additive and deductive, together with all vouchers, invoices, and labor records necessary to substantiate the account. The cost shall include an allowance for overhead and profit as set forth in Subsection (d) and (e) below.
- (b) The Contractor shall review any Owner directed change and shall respond in writing within fourteen (14) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the Contract time and price. The Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.
- The Owner shall review the Contractor's proposal 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, unless approval by the Department of General Services and/or by the Governor or his designee is required.
- (c) In figuring changes, any instructions for measurement of quantities set forth in the specifications shall be followed.
 - (d) The percentage for overhead and profit to be used in calculating both additive and deductive Changes in the Work (other than Changes covered by unit prices) shall not exceed the percentages for each category listed below. Said percentages for overhead and profit shall be applied only on the net cost of the changed Work (i.e. difference in cost between original and revised Work):
 - (1) If a Subcontractor does all or part of the changed Work, the Subcontractor's markup for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). The General Contractor's mark-up on the subcontractor's price shall be a maximum of ten percent (10%).
 - (2) If the General Contractor does all or part of the changed Work, its markup for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%).
 - (3) If a Sub-subcontractor at any tier does all or part of the changed work, the Sub-subcontractor's markup on that Work shall be a maximum of fifteen percent (15%). The markup of a sub-subcontractor's work by the General Contractor and all intervening tiers of subcontractors shall not exceed a total of ten percent (10%).
 - (4) Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract price attributable to that Work shall be deducted from the Contract price. However, in the event that material submittals have been approved and orders placed for said materials, a lesser amount, but in no case less than eighty percent (80%) of the Contract price attributable to that Work, shall be deducted from the Contract price. The credit to the

40. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or of anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days any sum certified by the Architect/Engineer when no dispute exists as to the sum certified, then the Contractor may, upon ten (10) calendar days written notice to the Owner and the Architect/Engineer, stop work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the Contractor can demonstrate that he would have had profit on the entire Contract if he had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the cost of physically closing down the job site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

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

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 Owner may terminate the Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregard laws, ordinances or the written instructions of the Architect/Engineer, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner may terminate the Contract.

Prior to termination of the Contract, the Owner shall give the Contractor and his surety ten (10) calendar days written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the Owner within said ten (10) days, the Owner may rescind its notice of termination. If it does not, the termination for cause shall become effective at the end of the ten day (10) notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than ten (10) days after the notice of termination, the Owner 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 Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

Upon termination of the Contract, the Owner shall take possession of the premises and of all materials, tools and appliances 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 Owner, together with any other expenses of terminating the Contract and having it completed by others.

Completion of the Work, as applicable, by showing a delay on the critical path of the CPM schedule.

- (c) In the event a delay is caused by the Owner, the Architect/Engineer or any other separate contractor employed by the Owner, any party for whom the Contractor deems the Owner responsible, or the agents and employees of any of them, the Contractor shall inform the Owner and the Architect/Engineer immediately at the time of the occurrence by fastest means available and shall give written notice within two (2) working days. The Contractor's notice to the Owner 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 Owner 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 Owner or parties for whom the Owner is responsible. If the delay is not then resolved, the Contractor may submit a request for change order in accordance with Sections 38 and 39 or submit a claim as provided for in Section 47. In the event of other delays, the Contractor shall give the Owner and Architect/Engineer written notice within ten (10) days.

No extension of time shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed. Furthermore, no extension of time shall be given for any delay unless a claim therefor is made in writing to the Owner, with a copy to the Architect/Engineer, 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 Owner and Architect/Engineer 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 based upon that cause.

- (d) Requests for compensation for delays must be substantiated by itemized data and records clearly showing that the Work delayed was on the critical path and that the costs are directly attributable to the delay in the Work claimed.
- (e) If the Contractor makes a claim against the Owner for costs and damages due to the alleged delaying of the Contractor in the performance of the Work, the Contractor shall be liable to the Owner and shall pay the Owner for a percentage of all costs incurred by the Owner 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 (Section 11-56.2.C., Code of Virginia)
- (f) Any change of the Contract completion date shall be accomplished only by issuance of a change order.
- (g) 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 Owner to occupy and utilize the facility for normal operation not later than the time/date indicated for completion.
- (h) If liquidated damages are provided by the Supplemental General Conditions, the following provisions apply:
- (1) Subject to the provisions of the General Conditions allowing for extension of time allowed for completion of the Work, if the Work is not substantially completed by the date required in the Contract, the Contractor shall owe to the Owner, not as a penalty but as Step One liquidated damages, the sum stated in the Supplemental General Conditions for Step One liquidated damages for each and every calendar day of delay in substantial completion.

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the Contract, then the Contractor shall, promptly upon receipt of notice from the Owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the Owner:

- (1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
 - (2) Make good all damage to the structure or site or equipment or contents thereof, which, in the opinion of the Architect/Engineer is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contracts; and
 - (3) Make good any work or materials or the equipment and contents of structures or the site disturbed in fulfilling any such guarantee.
- (c) In any case, where in fulfilling the requirements of the Contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the Architect/Engineer and guarantee such restored work to the same extent as it was guaranteed under such other Contract.
- (d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.
- (e) All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the Contract shall be subject to the term of this section during the first year of the life of such special guarantee.
- (f) Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for defective work under Section 30 of the General Conditions. Section 45 of the General Conditions relates only to the specific obligation of the Contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this Contract.
- (g) In the event the work of the Contractor is to be modified by another Contractor, either before or after the Final Inspection provided by Section 44 of the General Conditions, the first Contractor shall remain responsible in all respect under the Guarantee of Work given in Section 45 of the General Conditions, and under any other warranties provided in the General Conditions or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying its work. Both the first Contractor and the contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which it is modifying. If any contractor shall claim that another contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other contractor. Any contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the contractor whose work he is modifying.

49. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT

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

50. PROHIBITION OF ALCOHOL AND OTHER DRUGS AT JOBSITE

- (a) The Contractor shall establish, maintain and enforce policies which prohibit the following acts by all contractor, subcontractor and supplier personnel at the jobsite:
 - (1) the manufacture, distribution, dispensation, possession, or use of alcohol or other drugs in the workplace, except possession and medically prescribed use of prescription drugs.
 - (2) the impairment in the workplace from the use of alcohol or other drugs, including impairment from prescription drugs.
- (b) The Contractor shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Contractor, subcontractor and supplier personnel entering the jobsite are informed of the policy.

SECTION 1000 - SPECIAL CONDITIONS**1. GENERAL**

Bound in these specifications are the Commonwealth of Virginia General Conditions of the Contract for Capital Outlay Projects which govern the work.

The provisions included under these Special Conditions consist of special requirements applicable to this project.

2. SCOPE

The work to be included under the contract consists of furnishing and installing all materials and services required for:

SANGER HALL WALL REPAIR, PHASE II
MCV CAMPUS
VIRGINIA COMMONWEALTH UNIVERSITY
RICHMOND, VIRGINIA



in accordance with the Specifications and the Drawings, as prepared by Dunbar, Milby, Williams, Pittman & Vaughan, 611 Moorefield Park Drive/Suite A, Richmond, Virginia 23236. The work shall include all plant, labor, materials, equipment, tools and services necessary therefore and incidental thereto, complete in every respect and ready for the Owner's use, except as hereinafter otherwise provided.

Existing work shall be cut, altered, extended, removed or temporarily removed and replaced as necessary for the performance of the work. New work contiguous with present to remain shall match present as approved by the Engineers.

3. CONTRACT DOCUMENTS FURNISHED

The successful Contractor will be furnished without charge ten (10) sets of prints of drawings and specifications.

Drawings accompanying these specifications are listed under specification Section 01010.

4. CONDITIONS AT THE SITE

The Owner will maintain use of the present building and all services thereof during construction of work under this contract except as indicated otherwise. During the period of construction, an area of the adjacent site will be vacated by the Owner and turned over to the Contractor for storage and staging of construction. See site plan drawing for location. Security of present building facilities must be maintained at all times and the Owner will retain control of all keys and of locking facilities maintained in use by the Owner. The Contractor shall secure all lifts, ladders, and scaffolding which he may provide for access from the building exterior. Upon completion of construction, the Contractor will be required to restore to its original condition the portion of the site assigned to him

for staging and storage of materials, as well as all areas disturbed by the Contractor's lifts, scaffolding, and other equipment.

Contractor shall coordinate with building owner the times, time frames and durations of restricted use of, or interruptions to, building services, building entrances, emergency exits, etc. Contractor shall notify building owner in writing seven (7) calendar days in advance of anticipated interruptions or restrictions of use.

All access of the Contractor's personnel, equipment, and building materials through the interior of the existing building shall be carefully coordinated with the Owner by prior arrangements as to time, duration, security, sequences, etc.

Doors, stairs, and corridors leading to the doors and stairs are required exits and shall be maintained open and unobstructed during hours of building occupancy. Elevators and building entries must remain unobstructed during the course of demolition and construction work, and the Contractor shall provide sturdy overhead protection where entrances and exits pass beneath work areas.

Each bidder shall fully acquaint himself with conditions relating to construction of the existing building, and to adjacent facilities, and shall fully understand the areas of construction and restrictions attending the execution of the work under his contract.

0.1 BIDDING:

During the bidding period, the building may be inspected following the PreBid conference as stipulated in the NOTICE OF INVITATION TO BID, and at such times as can be scheduled by appointment.

0.2 ACCESS:

Access to the site shall be restricted to authorized persons at all times and signs and barricades maintained as required for safety. The Contractor shall provide security fencing as required to fully enclose storage and staging operations, and to prevent access to grade-level exterior spaces which are beneath areas of work included in this project.

0.3 ASBESTOS:

Proposed areas of work have been tested and have been identified as containing asbestos. Removal of this asbestos material is included as a part of this contract, and the extent of this work is shown on the documents prepared by others and included herewith. If the Contractor should suspect that other existing material involved in the work contains asbestos, he shall immediately notify the Engineer and the Owner who will provide confirmation and procedural instructions. If the material contains hazardous levels of asbestos, compliance with all applicable Federal and State laws, rules and regulations is mandatory.

No asbestos-containing material shall be used in the completion of work included in this project.

0.4 BARRICADES AND PROTECTIONS:

The Contractor shall provide barricades and safety signs in locations where required. These barricades and signs shall be maintained by the Contractor during all of the construction period, and the site and adjacent areas kept in safe condition for building occupants, visitors, and workmen.

Contractor shall provide adequate protection for adjacent existing finishes and building construction. Protective measures shall be subject to Owner's approval; however, responsibility for their adequacy rests with the Contractor.

The Owner's present utilities shall not be disconnected or interrupted except by written permission of the Owner and only for the duration of time agreed upon.

0.5 PROTECTION OF EXISTING ROOFING:

Prior to beginning on-site work, the Contractor shall submit a graphic and/or written plan for protection of the existing building roofing. Protection shall extend to all areas where the Contractor's workmen will be allowed access during demolition and construction. This plan will be subject to the Owner's approval; however, the Contractor remains responsible for the adequacy of roof protective measures.

5. SCHEDULE OF VALUES AND PAYMENT FORMS

The contractor shall submit to the Engineer the Schedule of Values required under Section 20 of the General Conditions. The Schedule of Values shall be arranged in accordance with Section numbers in this specification, and the values shown shall accurately reflect the contract amounts of categories of work to be undertaken by sub-contractors or suppliers. Where one category of work will be undertaken by more than one sub-contractor, or by both general and sub, break the category into multiple parts to accurately define the amount assignable to each party.

6. TEMPORARY FIELD OFFICE

A trailer, shed, or other office facility shall be located on the site. The Contractor shall locate this office within the storage/staging space designated on the drawings, and provide the required work surface, document storage, telephone and facsimile machine necessary to support the superintendent's work effort. A facsimile machine is a required item of equipment for this project.

7. TEMPORARY UTILITIES

Water and electric power are available in the building.

The Contractor shall make necessary arrangements with Virginia Commonwealth University for temporary use of the existing services required for construction, make all necessary connections, and remove all temporary work at his expense when the project is completed. The Owner will furnish necessary water and electric power for construction, but only to the extent and capacity of present service now existing on the site. Temporary service connections shall be made at a location designated by the Owner, and routed directly to the building's exterior by the most direct route.

Distribution of temporary services shall be made on the exterior of the building and protected from damage by the Contractor.

The Contractor shall provide temporary toilet facilities for the use of his workmen. Contractor shall be responsible for maintaining the facilities in sanitary condition, undamaged and in perfect working order throughout construction. These facilities shall be located within the Contractor's secure area.

8. INSPECTION AND TESTS

Laboratory or field testing, where required for this project, shall be done by a laboratory selected and paid by the Owner. The Contractor shall cooperate in providing samples for testing. The Contractor shall pay for all retesting as may be made necessary by discovery of defective or deficient materials or workmanship.

Specified items that meet certain tests, such as American Society for Testing Materials' specifications or tests, shall be accompanied by a certificate from the manufacturer stating that the supplied items meet such tests. Proposed substitutions shall be accompanied by test data illustrating results of the same procedures as the specified items, or as may be required by the Engineer. The Contractor shall include in his bid the cost of such tests, inspections, samples, submissions, and other items designated in the various divisions. Copies of reports covering such items shall be furnished to the Engineer by the Contractor in quantities as directed.

9. HAZARDOUS MATERIAL

Prior to the start of construction, the Contractor shall furnish the Owner a list of hazardous materials that will be brought onto the job site. If additional material, not on the initial list, is to be brought to the job site, the Owner shall be given 48-hours prior notification. When requested by the Owner, the Contractor shall furnish the Owner with Material Safety Data Sheets for materials to be brought onto the job site.

10. SOLID WASTE DISPOSAL

The disposal of solid waste in open dumps is prohibited.

END SECTION 01000



Virginia Commonwealth University

October 9, 1997

Mr. Venable Johnson, Jr.
Project Manager
White Construction Company, Inc.
P. O. Box 728
Chester, Virginia 23831

CONSTRUCTION AND
FACILITIES IMPROVEMENTS

6 SOUTH LYNCH STREET
P.O. Box 843003
RICHMOND, VIRGINIA 23284-3003

804 328-2525
FAX: 804 828-3528
TDD: 800 828-1120

Dear Mr. Johnson:

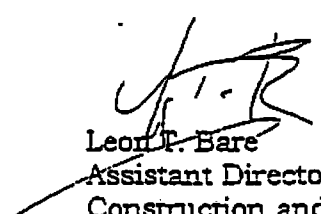
SUBJECT: Virginia Commonwealth University
Sanger Hall; Wall Repair
Project Code: 236-12708-9503
Change Order Nos. 2 and 3

Attached, for your information and action, is an executed copy of Change Order Nos. 2 and 3 for the above subject project. By receipt of these change orders you are hereby authorized to perform the work as stated for an additional \$44,465.10 to your contract.

We appreciate your assistance to us during this project.

Should you have any questions, please call me at 828-2526 or Opi Leckszas at 828-5669.

Sincerely,


Leon T. Bare
Assistant Director
Construction and
Facilities Improvements

ewk
Attachments
cc: Mr. Opi Leckszas
Mr. Bob O'Connor
Mr. Al Shulze



VCU 000018

CONTRACT CHANGE ORDER

PROJECT NO 236-12708-9503 CHANGE ORDER #2
 INSTITUTION/AGENCY: Virginia Commonwealth University
 APPROPRIATION TITLE: University Maintenance Reserve
 PROJECT TITLE: Sanger Hall Repair
 Phase II

DATE: 09/12/97

TO: White Construction Company, Inc.
 1305 West Hundred Road
 P.O. Box 728
 Chester, Virginia 23831

Gentlemen:

Under your contract dated December 16, 1996 for work at the MCV Hospitals/Virginia Commonwealth University, Sanger Hall, you are hereby authorized to make the following changes:

Furnish and install 400 Helifix anchors where there are presently no anchors detected by the AGS metal detector survey to include two lines of five each in each bay from Column 5 through Column 17 in the brick panel below the top relief angle and one line of five each just below the next lower relief angle. Install the anchors in accordance with the manufacturer's instructions to tie the face brick to the concrete frame or back-up masonry wall.

and to add to ~~(deduct from)~~ the contract, in accordance with the contract and specifications, the sum of Forty-two Thousand One Hundred Seventy-Four and 29/100 Dollars (\$42,174.29). There will be an extension of One Hundred Nineteen (-119-) days for contract completion. The date of completion of the contract was September 24, 1997 and now will be January 21, 1998.

CONTRACT COST SUMMARY			
AMOUNT OF ORIGINAL CONTRACT	TOTAL ADDITIONS	TOTAL DEDUCTIONS	AMOUNT OF CONTRACT TO DATE
\$657,217.50	\$53,424.29	-0.00-	\$710,641.79

In approving this change order, the Owner, or its representative, certifies that expenditures made to accomplish the work covered by this change order will not result in total expenditures exceeding the total project cost on the approved G.S. Form E&B CO-8. In making this determination, the Owner cannot assume that amounts shown on the originally approved CO-8 for EQUIPMENT may be used for any purpose other than the purchase of moveable equipment without prior approval of the Department of Planning and Budget.

DATE ISSUED:

Alvin J. Schulze
 Alvin J. Schulze, PE *AST* 09/12/97
 Architect/Engineer Date

DATE APPROVED:

[Signature] 10/14/97
 Agency Representative Date

DATE ACCEPTED:

[Signature] 09/29/97
 Contractor Date
 Lloyd P. White, Jr. President

CONTINUED ON REVERSE SIDE OF FORM

White Construction Co.

VCU 000019

CHANGE ORDER JUSTIFICATION

Form E&B CO-11a (12/96)

CO-11a

Project Number 236-12708-9503

Change Order Number: 2

Date: 09/12/97

INITIATOR

Initiated By: X Agency X A/E Contractor

REASON FOR CHANGE ORDER (see reverse side)

- X Unforeseen Site Conditions
- Existing building or utility conditions not as shown
- Change in Agency requirement
- Substitution/alternate method
- Item not as shown or specified
- Conflict/discrepancy in requirements
- Other (describe):

A/E's DESCRIPTION OF WORK INVOLVED

Installation of Hellfix Anchors to tie face brick veneer back to the concrete frame or back-up masonry where the owner-employed AGS Metal Detector Survey indicates there are no anchors.

A/E's EXPLANATION OF WHY WORK IS REQUIRED

Consultant Norbert Krogstad investigated crushing of existing face brick during General Contractor's brick removal operation. During this investigation, Krogstad made a metal detector survey for masonry ties and determined that some were missing and stated it may present a structural concern and pose a hazard during removal of masonry at the shelf angles.

A/E's RECOMMENDATION

Alvin J. Schulze BT

Alvin J. Schulze, PE

09/12/97

Recommend approval ☒

Architect/Engineer

Date

Recommend disapproval ☐

Dunbar, Milby, Williams, Pittman & Vaughan

WHEN CHANGE ORDER REQUIRES THE GOVERNOR'S DESIGNEE'S APPROVAL SUBMIT THE FOLLOWING SUMMARY INFORMATION

Contingency (per CO-8)	\$	
Less (or plus Change Orders #1 thru # 2)	\$	
Uncommitted Contingency	\$	

Approval of change orders which would have the effect of exceeding the approved project contingency must be processed concurrently with a revised G.S. Form E&B CO-8.

WHITE

P. O. BOX 728
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.

PROPOSAL FOR CHANGE #2

September 8, 1997

Dunbar, Milby, Williams, Pittman & Vaughan
611 Moorefield Park Drive, Suite A
Richmond, Virginia 23236

Attention: Al Schulze

RE: SANGER HALL - WALL REPAIRS

White Construction Company per your request, proposes a change order in the sum of \$42,174.29 for the time of delay to the project and for the installation of Helifix Wall Anchor Ties..

COST PER DAY INCLUDES:

A. Scaffold Rental

Scaffold rental fees are based on the fact that there has not been any brick work performed off the scaffold because the engineers report mandated that the project needed to start from the 14th floor and work down.

White Construction has priced additional scaffolding rental for this project.
Please see attached price quote from Safway Scaffold. (SEE ATTACHMENT #1, #2, #3)

B. Site Supervision (SEE ATTACHMENT #4)

C. Trailer Rental (SEE ATTACHMENT #5)

D. Phone Line Cost Average (SEE ATTACHMENT #6)

AND	MRD	BJR	SLI
CNW	GCD	RLS	LCB
KJP			KBH
RLV	SEP 10 1997		
JSJ			
ESF	PMH	CC	
ISD	RGW		

HELIFIX MATERIALS COST:
(SEE ATTACHMENT #8)

LABOR & EQUIPMENT COSTS:

Subcontractor quote from
Special Renovations, Inc.

(SEE SUBCONTRACTOR ESTIMATE FOR CHANGE FORM)

**ADDITIONAL SCAFFOLD BAY
TO INSTALL HELIFIX WALL TIES**

Subcontractor quote from Safway Scaffold
(SEE ATTACHMENT #10)

COSTS TO POINT 400 HOLES

(SEE ATTACHMENT #11 AND CONTRACTOR ESTIMATE FOR CHANGE FORM)

SCAFFOLD EXTENSION COSTS

TOTAL ADDITIONAL
SCAFFOLD RENTAL

(SEE SUBCONTRACTOR ESTIMATE FOR CHANGE FORM)

Our original contract with Safway Scaffolding called for two rental periods. The first phase 1 scaffolding for 60 days. The phase 2 scaffolding rental also called for 60 days rental. (See Attachment #1)

Our original submittal schedule indicates work off of the scaffold for 120 days. The difference here, due to the fact that White Construction Co. has to rent full height scaffold for 120 days, is the difference in the cost of the phase 1 scaffold for a total of 60 days. Phase 2 scaffold for 60 days is part of the original contract.

White Construction Co. is proceeding to erect scaffold in good faith, without a signed change order. We are doing this in the spirit of keeping the job moving along as much as possible under these serious conditions.

White Construction Co. respectfully requests a time extension of 119 days, until January 21, 1998 in order to complete this project. This time extension request is based on the delivery date of the brick, 60 days, and the delay for the installation of the Helifix Wall Anchor Ties, 59 days.

White Construction offers a price of \$19.50 each, to install any additional Helifix Wall Tie Anchors.

Yours truly,


Venable Johnson, Jr.
Project Manager

VCU 000023

GENERAL CONTRACTOR ESTIMATE FOR CHANGE ORDER

Form GC-1
(12/88)

Project Code: 236-12708-9503
Agency: VIRGINIA COMMONWEALTH UNIVERSITY
Project: SANGER HALL WALL REPAIR, PHASE 2

General Contractor: WHITE CONSTRUCTION CO.
Change Description: TIME EXTENSION DUE TO INSTALLATION OF HELIFIX ANCHORS.

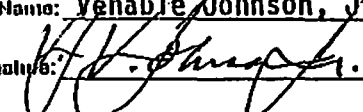
GENERAL CONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equipment	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Excl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	B	C	D	E	F = C x E	G	H = F x G	I	J = C x I	K	L = C x K
1.01	HELIFIX ANCHORS, AS.	375	Ea.					4.25	1,593.75		
1.02	HELIFIX ANCHORS, S.	75	Ea.					4.00	300.00		
1.03	SDS DRILL BITS	10	Ea.					24.00	240.00		
1.04	DRILL BITS, 5MM	5	Ea.					16.00	80.00		
1.05	HELIFIX INSTALL. TOOL	2	Ea.							165.00	330.00
1.06	HELIFIX ADAPTOR	2	Ea.							45.00	90.00
1.07	ADDITIONAL SCAFFOLD BAY	60	Days							4.73	283.80
1.08	MASON TO POINT HOLES	20	Days	160	17.50		2,800.00				
1.09	Subtotal from Estimate Continuation Sheets						8,260.00		23.50		360.49
1.07	Subtotal (S/T) Direct Costs:					Subtotal Labor	11,060.00	Subtotal Mat'l	2,237.25	Subtotal Equip.	1,064.29
1.08	Taxes/Insurance:					% of Item 1.0711 =	2,986.20	4.5% Sales Tax	100.67	4.5% Sales Tax	47.89
	Total Direct Costs					Total Labor	14,046.20	Total Mat'l	2,337.93	Total Equip.	1,112.18

SUBCONTRACT COSTS		
Item No.	Subcontractor Name (List totals from attached SC-1 forms)	Total Cost
A	B	C
2.01	SPECIAL RENOVATIONS	4,687.62
2.02	SAFWAY SCAFFOLD	14,731.28
2.03		
2.04		
2.05		
2.06		
2.07		
2.08		
2.09		
2.09	Total Subcontract Costs	19,418.90

SUMMARY			
Item No.	Description		Total Cost
3.01	Total Direct Labor Cost (Item 1.0711)		14,046.20
3.02	Total Direct Material Cost (Item 1.09)		2,337.93
3.03	Total Equipment Cost (Item 1.08)		1,112.18
3.04	Subtotal (3.01+3.02+3.03)		17,496.31
3.05	Overhead and Profit (15% x Item 3.04)		2,624.45
3.06	Subtotal (3.04+3.05)		20,120.76
3.07	Subcontractor Cost (Item 2.09)		19,418.90
3.08	GC Markup on Subcontractors (10% x Item 3.07)		1,941.89
3.09	Subtotal (3.06+3.07+3.08)		41,481.55
3.10	Additional Bond Cost		692.74
3.09	Total Change Order Cost (3.09+3.10)		42,174.29

Submitted By:

Name: Venable Johnson, Jr.

Signature: 

Title: Project Manager

Date: September 8, 1997

I have reviewed the costs proposed and find them to be reasonable (as proposed) (as marked).

NE Signature:

SUBCONTRACTOR ESTIMATE FOR CHANGE ORDER

Form 8C-1
(12/83)Project Code:
Agency:
Project:General Contractor:
Subcontractor:
Subcontractor Trade:

Change Description:

SUBCONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor			Direct Material		Direct Equipment		
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Excl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	B	C	D	E	F = C x E	G	H = F x G	I	J = C x I	K	L = C x K
1.01	Supervise Pilot Test	1	EA.	6		14.00	84.00				
1.02	A.B. Worker Pilot Test	1	EA.	12		10.50	126.00				
1.03	Supervisor	1	EA.	43		14.00	602.00				
1.04	A.B. Worker Drill	1	EA.	64		10.50	672.00				
1.05	A.B. Worker Install	1	EA.	32		10.50	336.00				
1.06	Move Scaffold	2	EA.	114		10.50	1,197.00				
1.07											
1.08											
1.09	Subtotal from Estimate Continuation Sheets								348.16		60.00
1.07	Subtotal (B/F) Direct Costs					Subtotal Labor	3,017.00	Subtotal Mat'l	348.16	Subtotal Equip.	60.00
1.08	Taxes/Insurance:					Net from 1.07(1)	632.66	4.0% Sales Tax	15.67	4.0% Sales Tax	2.70
1.09	Total Direct Costs					Total Labor	3,649.66	Total Mat'l	363.83	Total Equip.	62.70

SUB-SUBCONTRACT COSTS		
Item No.	Sub-Subcontractor Name	Total Cost
A	B (List Items from Attached 8B-1 form)	C
2.01		
2.02		
2.03		
2.04		
2.05		
2.06		
2.07		
2.08		
2.09		
2.00	Total Sub-Subcontract Costs	

SUMMARY			
Item No.	Description		Total Cost
3.01	Total Direct Labor Cost (Item 1.07(1))		3,649.66
3.02	Total Direct Material Cost (Item 1.08(1))		363.83
3.03	Total Equipment Cost (Item 1.08(1))		62.70
3.04	Subtotal (3.01+3.02+3.03)		4,076.19
3.05	Overhead and Profit (15% of 3.04)		611.43
3.06	Total Subcontractor Cost (3.04+3.05)		4,687.62
3.07	Sub-Subcontractor Cost (Item 2.09)		
3.08	Total Cost Reported to GO (3.06+3.07)		

Submitted By

Name: James P. ...Signature: [Signature]Title: PresidentDate: 8/22/97

ESTIMATE CONTINUATION SHEET

(Attach to Form GC-1, SO-1, or SS-1 as necessary for continuation of the direct cost estimates.)

• Project Code:
Agency:
Project:

Performing Contractor: SPECIAL RENOVATIONS, INC.

• Change Description:

GENERAL CONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equipment	
Item No.	Description	Quantity	Qty Units	Direct Labor Union Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Incl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	Disposale Suit	1	Box					23.00	23.00		
	Poly	1	Roll					36.00	36.00		
	Duct Tape	1	CS					67.20	67.20		
	A.B. Vacuum Bags	2	EA.					3.50	7.00		
	Resp. Filters	4	EA.					2.49	9.96		
	Air Samples	2	EA.					15.00	30.00		
	A.B. Disposal	1	Lt.					75.00	75.00		
	Misc.	1	Lt.					100.00	100.00		
	Hammer Drill Rental	2	EA.							30.00	60.00
Subtotal Labor								Subtotal Material		Subtotal Equip.	
								348.16		60.00	

Page 8 of 10 (Only Forward To Line 1,00)

VCU 000027

FROM: SAFWAY STEEL

804355175

18

1997-08-28

08:05 4291 P.02/02

SUBCONTRACTOR ESTIMATE FOR CHANGE ORDER

Form SC-1
(12/86)

Project Code: 236-12708-9503
 Agency: VIRGINIA COMMONWEALTH UNIVERSITY
 Project: SANGER WALL WALL REPAIR, PHASE 2

General Contractor: WHITE CONSTRUCTION CO.
 Subcontractor: SAFWAY SCAFFOLDING
 Subcontractor Trade: SCAFFOLD - RENT AND ERECT

Change Description: TIME EXTENSION DUE TO INSTALLATION OF HELIFIX ANCHORS.

SUBCONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equipment	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage (Rate, Incl. Taxes & Ins.)	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A		0	0								
1.01	#1 Phase I Rent	59								103.01	6077.59
1.02	#2 Phase II Rent	60								103.01	6180.60
1.03											
1.04											
1.05											
1.06											
1.07											
1.08											
1.09	Subtotal from Estimate Continuation Sheets										
1.09	Subtotal (Net) Direct Costs:					Subtotal Labor		Subtotal Mat'l		Subtotal Equip.	12258.19
1.09	Taxes/Insurance: FICA, FUI, BUI, and Workmen's Comp. at					% of Item 1.9711		1.9% Sales Tax		1.8% Sales Tax	5513.62
1.09	Total Direct Costs					Total Labor		Total Mat'l		Total Equip.	12809.81

SUB-SUBCONTRACT COSTS		
Item No.	Sub-Subcontractor Name (List Name from attached SSB-1 forms)	Total Cost
A		0
2.01		
2.02		
2.03		
2.04		
2.05		
2.06		
2.07		
2.08		
2.09	Total Sub-Subcontract Costs	

SUMMARY		
Item No.	Description	Total Cost
3.01	Total Direct Labor Cost (Item 1.09)	-0-
3.02	Total Direct Material Cost (Item 1.09)	-0-
3.03	Total Equipment Cost (Item 1.09)	12809.81
3.04	Subtotal (1.09 + 3.03)	12809.81
3.05	Overhead and Profit (15% of Item 3.04)	1921.47
3.06	Total Subcontractor Cost (1.09 + 3.05)	14731.28
3.07	Sub-Subcontractor Cost (Item 2.09)	0
3.08	Total Cost Reported to GO (1.09 + 3.07)	14731.28

Submitted By:

Name: Martin Carlson

Signature: 

Title: Branch Manager

Date: 8/27/97

P.03

TEL: 755-8842

AUG-27-1997 1400 03:23 ID:WHITE CONSTRUCTION CO.



ATTACHMENT #1

SAFWAY STEEL PRODUCTS INC. • 2113 LOUMOUR AVENUE • P.O. BOX 11308 • RICHMOND, VA 23220 (804) 355-2525 FAX (804) 355-7777

July 10, 1997

Venable Johnson, Jr.
White Construction
1305 West Hundred Road
Chester, Virginia 23831

Subject: Sanger Hall Project

Dear Venable,

Due to the problems that you are experiencing at Sanger Hall, your rental costs for the scaffolding will be impacted. The costs that you should anticipate are as follows:

- #1. Phase I Scaffolding - \$113.46 per day, plus tax.
- #2. Phase II Scaffolding - \$237.25 per day, plus tax.

Venable, please note that during the dismantling phase we plan to bring the scaffold down to the ground in an expedient manner. If we are required to do only one level at a time because of the changes that have occurred it will result in a time and production inefficiency that will also impact your scaffold costs for the project.

Sincerely,

Martin R. Carlson
Branch Manager

VCU 000028

WHITE

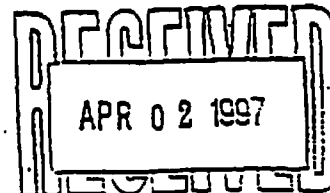
ATTACHMENT #2

P. O. BOX 728
15 WEST HUNDRED ROAD
HESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC. SUBCONTRACT

Safway Steel Products, Inc.
P. O. Box 11308
Richmond, VA 23230

Contract #285-4



DATE: January 24, 1997

PROJECT NAME: Sanger Hall Wall Repair, Phase II, MCV Campus

SUBSTANTIAL COMPLETION DATE:

No. OF CALENDAR DAYS: 240

CONTRACTOR: WHITE CONSTRUCTION CO., INC., its successors and/or assigns

ARCHITECT: Boynton Rothschild Rowland

DATE OF PLANS/SPECS: October 20, 1996

NO. OF ADDENDA: One; Clarification #1

CONTRACT DOCUMENTS: The Contract Documents include this Subcontract, the plans, drawings, specifications, approved shop drawings and submittals, and the prime contract to the extent it is not inconsistent with the terms hereof. Every obligation imposed upon Subcontractor by any of the Contract Documents shall be considered material as between Contractor and Subcontractor.

THE WORK: Subcontractor shall furnish all supervision, labor, materials, tools, equipment and services, permits, fees, and taxes required by the Contract Documents in the following division(s)/section(s) together with all work reasonably inferable therefrom: - Furnish, engineer and erect all scaffolding per contract document requirements including stair tower to roof and equipment hoist. Erect first two decks for two months. Erect remaining scaffolding to roof for an additional two months. There shall be two working deck levels available at all times and an additional non loaded deck for logistics purposes. There are to be twelve additional deck moves as requested by contractor. Rental time starts when scaffolding is complete and ready for use.

Responsible for any site areas, grass, paving, trees and shrubs, etc. that you may damage or destroy in the course of your work.

~~Subcontractor is responsible for his own cutting, patening, excavating, backfilling, and compacting.~~ Subcontractor shall check all Contract Documents for the Work and shall verify dimensions and figures shown before laying out and proceeding with the Work, and shall coordinate with Contractor and all other trades on the project. Subcontractor shall inspect and verify all conditions which affect the installation of his work and report any issues to the Contractor before proceeding with his work. Subcontractor agrees to perform any additional work within its trade required of Contractor, with the price for such work to be determined in accordance with the terms of the prime contract less Contractor's profit and overhead. Contractor will accept no charges for extras without its prior written authorization. Subcontractor may be required to submit daily field reports per Contractor's format.

Subcontractor agrees that the Work includes all labor and materials required for a complete and operational system, and that all Work shall be performed in a good and workmanlike manner.

Subcontractor agrees to be responsible for removal of all trash, excess excavation, and debris from the site as needed or to participate in dumpster costs with Contractor in proportion to the amount of trash generated as assessed by the Contractor. Upon 24 hours notice of any default with respect to any of these obligations, Contractor may backcharge Subcontractor for any costs incurred by reason of such default.

SUBCONTRACT SUM: Forty-Five Thousand Fifty-Five and 29/100 Dollars (\$45,055.89)

To the extent any prices are to be based upon unit prices, the price shall be computed in accordance with those unit prices detailed in Exhibit A, and Subcontractor shall document each unit appropriately. [Add Exhibit A, if applicable]

PAYMENT TERMS: Subcontractor shall submit for Contractor's approval a Schedule of Values showing labor and material breakdowns by phase and item of Work with this Subcontract. Payment applications detailing completion of the Work in accordance with the approved Schedule of Values and containing documentation required by the Contract Documents must be submitted by the 25th day of each month for payment by the 30th day of the following month subject to the other terms of this Subcontract. Subcontractor shall provide partial and/or final lien waivers for themselves and for their subcontractors and suppliers upon request.

BY CONTRACTORS LIEN WAIVER FORM.

VCU 000029

SAFWAY SAFWAY

INVOICE
Number 4/24/97
Date RENTAL
TYPE PAGE 4

STEEL PRODUCTS
DUMOUR AVENUE
BOX 11308
AND, VA 23230
#: 804-355-6523
: 804-355-7776
106600

POSTED
3/31/97

ATTACHMENT #3

IF No
CONSTRUCTION
W. HUNDRED RD
BOX 725
ER, VA 23631

Job No. 00009
SANGER HALL E AND D JOB#363
RICHMOND, VA

R#: 9806

Job Phone No. ROBBIE
Customer Contact

Contract #	Customer Rep #	Ordered By	Office Phone	Project	Order Taken	Sales Rep
CONTRACT# 1		W. H. E.	804/668640		UNSCLES	CC
Ship Via	Bill To	Terms	Approved	Pre-Test		
SAFWAY/DELIVERY		NET 30				
Description	Quantity					

OPF	GUARD R POST F W/BL CORNER SHIPMENT# 10942 04/03/97 RETURN# 8957 04/15/97	80 80
	COUPLING PIN W/SNAP BUTTON SHIPMENT# 10942 04/03/97 RETURN# 8957 04/15/97	232 232
37	HORIZ DIAG GOOSER 5' X 7' SHIPMENT# 10947 04/03/97 RETURN# 8957 04/15/97	- -
SGRU	LABOR CHARGES UP	1.00
SGR SUB	LABOR SUB-CONTRACT	1.00
UCKING	SAFWAY TRUCKING	1.00
	BILLING CYCLE 4/01/97 TO 4/28/97	

LABOR TOTAL: 4623.20
RENTAL TOTAL: 3696.59
FREIGHT TOTAL: 1250.00
INVOICE TOTAL: 9570.29
VA STATE TAX: 122.79
RICHMOND (IND C COUNTY TAX: 34.97
RICHMOND CITY TAX: 93.70
GRAND TOTAL: 9621.75

Handwritten:
255 / 0166
4000
OK to Pay
per agreement of
LO/P & MARTIN
6/2/97

Handwritten:
NO
REMARKS
PER
CONTRACT
R. H. HANCOCK

ATTACHMENT #4

41 VENDOR	INVOICE	CHECK	DATE	ITEM DESCRIPTION	ESTIMATED	ACTUAL	QUANTITY	HOURS	PERIOD	GENERAL	LEDGER
D EMPLOYEE DESCRIPTION	NUMBER	NUMBER			AMOUNT	AMOUNT			& YEAR	ACCOUNT	REFERENCE
UCV Sanger Hall II			03/06/97		31,600.00						
Superintendent						650.00		40.00	06 97	004030	PY355\0035
Peck William R. Peck, Jr.			06/13/97			01.04			06 97		PY355\0000
Peck William R. Peck, Jr.			06/13/97	Actual Burden		700.00		40.00	06 97	004030	PY356\0035
Peck William R. Peck, Jr.			06/20/97			00.13			06 97		PY356\0000
Peck William R. Peck, Jr.			06/20/97	Actual Burden		700.00		40.00	06 97	004030	PY357\0037
Peck William R. Peck, Jr.			06/27/97			00.13			06 97		PY357\0000
Peck William R. Peck, Jr.			06/27/97	Actual Burden		700.00		40.00	07 97	004030	PY359\0039
Peck William R. Peck, Jr.			07/04/97			00.13			07 97		PY359\0000
Peck William R. Peck, Jr.			07/04/97	Actual Burden		700.00		40.00	07 97	004030	PY360\0030
Peck William R. Peck, Jr.		*	07/11/97			00.13			07 97		PY360\0000
Peck William R. Peck, Jr.		*	07/11/97	Actual Burden							
Job Costs					31,600.00	3,004.36		200.00			
Employee Totals						3,004.36		200.00			
Peck William R. Peck, Jr.											
General Ledger Totals						3,450.00		200.00		004030	
Cost - Direct Labor											
Company Costs					31,600.00	3,004.36		200.00			
Employee Totals						3,004.36		200.00			
Peck William R. Peck, Jr.											
General Ledger Totals						3,450.00		200.00		004030	
Cost - Direct Labor											

$$17.50 + 2.20 = 19.70 \text{ HR.} \times 8 \text{ HRS.} = 157.60$$

PER DAY

ORE R CONFIRMATION

This Is Not An Invoice
Do Not Pay From This

Customer: WHITE CONSTRUCTION CO INC
PO BOX 728

06859

Date: FEBRUARY 27, 1997

CHESTER, VA 23831

ATTACHMENT #5

Phone: 804-751-6943

Location: RICHMOND, VA

Equipment Name: MCV

Ordered By: ROBBIE

P.O.#:

Terms: 6 MONTHS RENTAL NET 10

Est. Delivery Date: 3/03/97

Salesperson: KIPP CREECH

Salesperson Phone #: 804-520-5733

Model: ~~825~~
820

Serial Number: ~~21-27133~~
20 25876

Equipment and Optional Equipment: Per Specifications or as Quoted

Customer Copy

Acton Mobile Industries, Inc. assumes no liability for non-coded setups.

ALL RISK Physical Loss or Damage Insurance coverage shall be provided by Lessee for the full value of the Equipment naming Acton Mobile Industries Inc. as certificate holder and 'loss payee'. Monthly insurance premium if obtained through Acton is 6 percent per annum but not less than \$25.00 per month, subject to deductible amount equivalent to 30 percent of the value of the trailer.

VALUE OF TRAILER FOR INSURANCE PURPOSES (Rental or Lease Option only): \$4,953.00

RENTAL OR LEASE OPTION PROGRAM

Monthly rate for 6 months \$ 85.00

Monthly Insurance, if applicable CUSTOMER

State and Local Sales Taxes 3.53

Delivery Freight 60.00

Setup / Block, Level 170.00

Refundable Security Deposit 85.00

Return Freight Deposit unless
payable upon occurrence When Occurs

Others
Total Amount of First Invoice \$ 403.53

SELLING PRICE: _____

SALES TAX: _____

TOTAL DELIVERY PRICE: _____

ACCEPTED:

WHITE CONSTRUCTION CO INC

BY: *[Signature]*

LEASE WITH OPTION TO PURCHASE (if applicable):
100% of paid in rentals are applied toward selling price. A
carrying charge of _____ % of the original value is
added to the purchase price for each month of the rental
period.

TITLE: *[Signature]*

DATE: 3/11/97

PLEASE SIGN AND RETURN CONFIRMATION COPY • RETAIN SECOND COPY FOR YOUR FILES

ATTACHMENT #6

Date - 14 JUL 1997 Time - 11:59:59

White Construction Company, Inc.
VENDOR HISTORY BY JOB

2a

INVOICE NUMBER	COST PHASE CODE	DATE	DESCRIPTION	QUANTITY	INVOICE AMOUNT	UNPAID AMOUNT	PAID AMOUNT	RETENTION	DISC WORKER
Vendor	Bell		Bell Atlantic - Va.						
Job	285		NCV Sanger Hall ii						
4/21/97	01 73	A 04/21/97	Sanger Hall phon		381.27				
4/21/97	01 73	A 04/21/97	Check # 008398				381.27		
5/20/97	01 73	A 05/20/97	Sanger AT&T		85.75				
5/20/97	01 73	A 05/20/97	Check # 008507				85.75		
6/13/97	01 73	A 06/13/97	Sanger telephone		96.03				
6/13/97	01 73	A 06/13/97	Check # 008558				96.03		
			Cost Code Total		563.05		563.05		
			Phase Total		563.05		563.05		
			Job Total		563.05		563.05		
			Vendor Total		563.05		563.05		
			Company Total		563.05		563.05		

7-1-97 bid

113.33

676.38 Total

AVERAGE BILL

85.75

96.03

113.33

295.11

3.28 PER DAY

295.11 ÷ 90 DAYS = 3.28 PER DAY



ATTACH/ WT # 8

STAINLESS STEEL WALL TIE SYSTEMS**Q U O T A T I O N**

DATE: AUGUST 21, 1987
PROJECT: SANGER HALL
COMMON WEALTH UNIVERSITY
VIRGINIA
COMPANY: WHITE CONSTRUCTION CO. INC.
CHESTER, VIRGINIA
ATTENTION: VENABLE JOHNSON

■ HELIFIX 304 STAINLESS STEEL REMEDIAL WALL TIES

350 PCS	HRT80/85 X 170MM ASYMMETRICAL HELIFIX TIES	\$ 4.25 EACH
50 PCS	HRT80/195MM 8MM X 195MM HELIFIX TIES	4.00 EACH
5 PCS	5MM ROTARY PERCUSSION DRILL BITS	12.00 EACH
10 PCS	SDS 5MM (3/16) X 12' DRILL BITS	24.00 EACH
2	8MM DRYFIX SETTING TOOLS	165.00 EACH
2	8MM EXTENSION TOOL	45.00 EACH

■ FREIGHT EXTRA**■ ALL PRICES ARE QUOTED IN U.S. FUNDS**

TERMS: NET 30 DAYS - SUBJECT TO CREDIT APPROVAL
DELIVERY: STOCK TO 2 WEEKS
TELEPHONE 1-800-561-3026
FAX 415-749-1017

HELIFIX Ltd. 30 Millwick Drive, Weston, Ontario M8L 1Y3 Telephone: 1-800-561-3026 Fax: (416) 749-1017

VCU 000034

ATTACHMENT #10

OVER INFORMATION

6600
E CONSTRUCTION
W. HUNTER RD
SUI 726
TER
3365

RENTAL QUOTATION

SAFWAY STEEL PRODUCTS
2013 LINDSEY AVENUE
RICHMOND
VA 23260
Phone: 804-355-8522
Fax: 804-355-7776

Date: 7/16/97
Time: 11:22:47
Page: 1

ATN VENABLE
JOHNSON
(804) 769-8842

E INFORMATION

Job #: 157
Date: 7/16/97
Req.: 01 HOUSE ACCOUNT
Estimate: NET30
Job: 990

Job Site: 797 SANGER HALL EXTRA MATERIAL 16'

Item Number	Part Description	Quantity Ordered	Item Weight	Extended Weight	Item Price	Extended Price
1	BRACKET SIDE 20"	3.00	8.50	25.5	2.25	6.75
2	GUARD R POST F W/CL CORNER	2.00	9.25	18.5	2.00	4.00
	GUARD R 2'	4.00	1.50	6.0	1.25	5.00
	CLAMP HORIZ DIAGONAL	12.00	1.50	18.0	1.00	12.00
	TURBOARD STL SIDE 7'	4.00	13.90	55.6	2.00	8.00
	TURBOARD STL END 3'	2.00	9.20	18.4	2.00	4.00
	STE STL PLANK 8" X 7"	12.00	30.00	360.0	3.65	43.75
	GUARD R PANEL 7' FIVE FRAMES	2.00	21.00	42.0	2.00	4.00
	GUARD R 5'	4.00	3.25	13.0	1.25	5.00
	TURBOARD STL END 2'	2.00	4.20	8.4	1.00	2.00
	CUMPLING PIN W/SNAP BUTTON	2.00	1.25	2.5	1.20	2.40
	ACCESS LADDER UNIT 6' SECT	1.00	18.75	18.7	4.00	4.00
	ACCESS LADDER UNIT 3' SECT	1.00	9.75	9.7	2.00	2.00
	ACCESS LADDER UNIT BRACKET	3.00	5.75	17.3	2.00	6.00
Quote Totals...		60.00		795.5 Lbs		126.65

COMMENTS
PRICE INCLUDES 28 DAY RENTAL FOR ONE LATERAL WHEN COMPLETE WITH
LADDER, TWO BOARDS AND BRACKET.

- NOTE: 1. All quotes are subject to all terms and conditions referred to in the SAFWAY STEEL rental/sales agreement.
2. All quotes are subject to state, federal and local taxes.
3. All quotes are valid for 30 days unless otherwise noted.

Terms and conditions accepted by: WHITE CONSTRUCTION

AUTHORIZED SIGNATURE

(SAFWAY REPRESENTATIVE)

VCU 000035

SHADE & WISE

INCORPORATED

BUILDING MATERIALS

P.O. BOX 11212 / RICHMOND, VIRGINIA 23230

PHONE 355-2986

FAX 804/339-3424

TO: Venable Johnson DATE: 5-9-97
 COMPANY: White Const. FAX: _____

***** T E L E F A X *****

FROM: Frank Wise PAGES TO FOLLOW: 0

NOTES: Per our conversation price on Matter

	<u>100lb lots</u>
<u>Special Light - Type N</u>	<u>7.40lb</u>
<u>Special Light - Type S</u>	<u>(11.25lb)</u>
<u>C 239 Type N</u>	<u>12.85lb</u>
<u>C 239 Type S</u>	<u>14.60lb</u>

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED INFORMATION INTENDED ONLY FOR THE USE OF THE ADDRESSEE ABOVE.

IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

THANK YOU ...

CONTRACT CHANGE ORDER

G.S. Form E&B CO-11 (12/96)

CO-11

Change Order Number: 4

Date: 01/08/98

PROJECT DESCRIPTION

Project Number: 236-12708-9503
Institution/Agency: Virginia Commonwealth University
Project Title: MCV Sanger Hall Wall Repair Phase II



CHANGE DESCRIPTION

TO: White Construction Company, Inc.

Gentlemen:

Under your contract dated December 16, 1996 for work at MCV Sanger Hall you are hereby authorized to make the following changes:

Install additional brick shelf relief angles from the Eighth Floor level through the Penthouse level to replace those existing angles declared unsuitable by the A/E, all in accordance with your Proposal for Change #5, dated December 22, 1997 (copy enclosed).

and to ☒ add to ☐ deduct from the Contract Price, in accordance with the Contract Documents, the sum of
Thirteen Thousand Seven Hundred Thirty Eight and 60/100 dollars \$13,738.60

There will be an extension of sixteen (16) days for contract completion.

The contract completion date was January 21, 1998 and will now be February 6, 1998.

(Failure to include a change to time shall waive any change to the time allowed by the contract for completion of the Work unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the change order. Such determination may not be postponed more than 45 days from date of approval of this change order by agency.)

CONTRACT COST SUMMARY

AMOUNT OF ORIGINAL CONTRACT	TOTAL ADDITIONS	TOTAL DEDUCTIONS	AMOUNT OF CONTRACT TO DATE
\$657,217.50	+ \$69,453.70	- \$ - 0.00 -	= \$726,671.20

CHANGE AUTHORIZATION

Issued By: <i>William J. Schulz/B</i> Dunbar, Milby, Williams, Pittman & Vaughan	01/08/98
Architect/Engineer	Date
Approved / Recommended By: <i>[Signature]</i>	1/9/98
Agency Representative	Date
Accepted By: <i>[Signature]</i>	1-8-98
Contractor	Date

For Use By The Governor's Designee For Individual Change Orders Over \$50,000 Or After The Cumulative Total of Change Orders Exceed 25% of the Original Contract Price	
Recommended By:	
Director, Division of Engineering & Buildings	Date
Approved:	
Director, Department of General Services	Date

Note: Attach a copy of the G.S. Form E&B CO-11a to this form when submitting the information copy of the CO-11 or when submitting a CO-11 to the Division of Engineering and Buildings for approval.

CHANGE ORDER JUSTIFICATION

CO-11a

G.S. Form E&B CO-11a (12/96)

Project Number 236-12708-9503

Change Order Number: 4

Date: 01/08/98

INITIATOR

Initiated By: _____ Agency X A/E _____ Contractor

REASON FOR CHANGE ORDER (see reverse side)

- Unforeseen Site Conditions
- X Existing building or utility conditions not as shown
- Change in Agency requirement
- Substitution/alternate method
- Item not as shown or specified
- Conflict/discrepancy in requirements
- Other (describe): _____

A/E's DESCRIPTION OF WORK INVOLVED

Replace existing brick shelf angles when brick face extends beyond the angle edge by more than 1 1/4".

A/E's EXPLANATION OF WHY WORK IS REQUIRED

Existing exterior concrete frame is not built to design building line. Existing angles are shimmed out to support brick veneer. The existing condition is not structurally acceptable.

A/E's RECOMMENDATION

Alvin J. Schuler
Dunbar, Milby, Williams,
Pittman & Vaughan

01/08/98

Architect/Engineer

Date

Recommend approval ✓

Recommend disapproval

WHEN CHANGE ORDER REQUIRES THE GOVERNOR'S DESIGNEE'S APPROVAL SUBMIT THE FOLLOWING SUMMARY INFORMATION

Contingency (per CO-8)	\$	_____
Less (or plus Change Orders #1 thru # 2)	\$	_____
Uncommitted Contingency	\$	_____

Approval of change orders which would have the effect of exceeding the approved project contingency must be processed concurrently with a revised G.S. Form E&B CO-8.

COST SHARING FOR DESIGN ERRORS AND OMISSIONS

Is this change order required in whole, or in part, because of a design error or omission?

No

If so, outline the proposed cost sharing, if any, by the responsible design professional:

No

ADDITIONAL SUPPORT FOR CHANGES IN
AGENCY REQUIREMENTS

- 1) When was the change in requirements (function, mission) known?

December 27, 1997

- 2) If known before construction bidding, why were the needed changes excluded from the bid package?

This was not known prior to bidding phase.

- 3) What quantitative impact would the lack of this change have on the mission or service provided by the agency?

Existing concrete frames are not built to design building line.
The existing condition is not structurally sound.

- 4) Why can the work not be packaged and bid separately?

Bidding this work would not be cost effective. Current conditions are a hazard to public safety.

WHITE

P. O. BOX 728
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.

PROPOSAL FOR CHANGE #5

December 22, 1997

Dunbar, Milby, Williams, Pittman & Vaughan
611 Moorefield Park Drive, Suite A
Richmond, Virginia 23236

Attention: Al Schulze

RE: SANGER HALL - WALL REPAIRS

Dear Al,

Please find enclosed our Proposal for Change #5, (this would be your Change Order #4). Our PFC #5 deals with the additional work due to the unforeseen conditions uncovered at the Relief Angles. This covers the floors from 8 thru the penthouse level. It includes materials and labor to replace the Angles, Supervision and Overhead, and Scaffold Rental costs associated with the delay.

White Construction Co. respectfully requests an additional sixteen (16) days, until February 6, 1997 to be added to the project completion date due to these conditions.

If you have any questions, please give me a call.

Yours truly,


Venable Johnson, Jr.
Project Manager

VJ/cj

Enclosure

cc: Opie Leckzas
Bob O'Conner

VCU 000054

SUB-SUBCONTRACTOR ESTIMATE FOR CHANGE ORDER

Form SS-1
(12/86)

Project Code: 236-12708-9503
Agency: VA. COMMONWEALTH UNIVERSITY
Project: SANGER HALL WALL REPAIR, PHASE 2

General Contractor: WHITE CONSTRUCTION CO.
Subcontractor: GIBBS MASONRY
Sub-Subcontractor:
Sub-Subcontractor Trade:

Change Description: ABATE EXISTING INCORRECT ANGLES AND REPLACE WITH NEW CORRECT ANGLES

SUB-SUBCONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equip.	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Excl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	B	C	D	E	F = C x E	G	H = F x G	I	J = C x I	K	L = C x K
1.01	INSTALL MISSING BOLTS	22	EA	1	22	16.00	352.00				
1.02	INSTALL NEW ANGLES	7	EA	3	21	16.00	336.00				
1.03	ANGLE INSTALL. SUPERVISION	7	EA	3	21	22.50	472.50				
1.04	CUT BACK OFF BRICK	11	BAY	2.5	27.5	16.00	440.00				
1.05	FIELD MODIFY FLASHING	11	BAY	1	11	16.00	176.00				
1.06	SAW BLADE	.17	EA					340.00	57.80		
1.07											
1.08											
1.09	Subtotal from Estimate Continuation Sheets										
1.97	Subtotal (S/T) Direct Costs:					Subtotal Labor	1,776.50	Subtotal Mat'l	57.80	Subtotal Equip.	
1.98	Taxes/Insurance: FICA, FUI, SUI, and Workmen's Comp. at			20		% of Item 1.9711 =	355.30	4.5% Sales Tax	2.60	4.5% Sales Tax	
1.99	Total Direct Costs					Total Labor	2,131.80	Total Mat'l	60.40	Total Equip.	

SUMMARY		
Item No.	Description	Total Cost
3.01	Total Direct Labor Cost (Item 1.9911)	2,131.80
3.02	Total Direct Material Cost (Item 1.991)	60.40
3.03	Total Equipment Cost (Item 1.991)	
3.04	Subtotal (3.01+3.02+3.03)	2,192.20
3.05	Overhead and Profit (15% x Item 3.04)	328.83
3.99	Total Sub-Subcontractor (3.04+3.05)	2,521.03

Submitted By:

Name: LEWIS GIBBS

Signature: *Lewis Gibbs*

Title: President

Date: 12/19/97

95 3.35

SUBCONTRACTOR ESTIMATE FOR CHANGE ORDER

Form SC-1
(12/78)

Project Code: 236-12700-9503
Agency: VA Commonwealth University
Project: Sanger Hall Wall Repair, Phase 2

General Contractor: White Construction Co., Inc.
Subcontractor: Special Renovations, Inc.
Subcontractor Trade: Asbestos Abatement

Change Description: Abate Shelf Angles Not in
Compliance with drawings

SUBCONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equipment	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Excl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	B	0	0	E	F = D x E	G	H = F x G	I	J = D x I	K	L = D x K
1.01	Remove Shelf Angles	7	EA	1.4	32	10.75	344				
1.02	Supervision	7	HR	1	7	17.50	122.50				
1.03	Encapsulant	7	sqyds					10.00	70.00		
1.04											
1.05											
1.06											
1.07											
1.08											
1.09	Subtotal from Encapsulant Application Sheets										
1.10	Subtotal (G/I) Direct Costs						466.50		70.00		
1.11	Taxes/Insurance: 21% CA, P.U., S.U., and Workmen's Comp. et				20.97		97.03		3.15		
1.12	Total Direct Costs						564.33		73.15		

SUB-SUBCONTRACT COSTS		
Item No.	Sub-Subcontractor Name	Total Cost
A	B	C
2.01		
2.02		
2.03		
2.04		
2.05		
2.06		
2.07		
2.08	Total Sub-Subcontract Costs	

SUMMARY		
Item No.	Description	Total Cost
3.01	Total Direct Labor Cost (Item 1.10)	564.33
3.02	Total Direct Material Cost (Item 1.09)	73.15
3.03	Total Equipment Cost (Item 1.08)	
3.04	Subtotal (3.01+3.02+3.03)	637.48
3.05	Overhead and Profit (10% of Item 3.04)	95.62
3.06	Total Subcontractor Cost (3.04+3.05)	733.10
3.07	Sub-Subcontractor Cost (Item 2.08)	0
3.08	Total Cost Reported to CU (3.06+3.07)	733.10

Submitted By

Name: James L. Parrish

Signature: 

Title: President

Date: 12/10/97

VCU 000058

ID: 904 / 12-1785-1
DEC-19-97 10:54 FROM: SPECIAL RENOVATIONS

GENERAL CONTRACTOR ESTIMATE FOR CHANGE ORDER

Form GC-1
(12/86)

VCU 000059

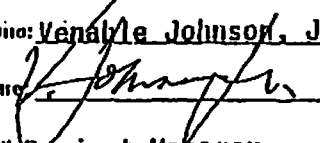
Project Code: 236-12708-9503
Agency: VA. COMMONWEALTH UNIVERSITY
Project: SANGER HALL WALL REPAIR, PHASE 2

General Contractor: WHITE CONSTRUCTION CO.
Change Description: REPLACE INCORRECT ANGLE IRON

GENERAL CONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equip.	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Excl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	B	C	D	E	F = C x E	G	H = F x G	I	J = C x I	K	L = C x K
1.01	SHELF ANGLE IRON	7	EA.					236.43	1,655.00		7
1.02	DELIVERY TRIP	2	EA.					60.00	120.00		
1.03	EXPANSION BOLTS	12	EA.					3.73	44.76		
1.04	TIME DELAY SUPERVISION	16	Days	8/Hr. Day	128	17.50	2,240.00				
1.05	TRAILER RENTAL	16	Days							2.83	45.28
1.06	TELEPHONE	16	Days							3.28	52.48
1.07											
1.08											
1.09	Subtotal from Estimate Continuation Sheets										
1.07	Subtotal (S/T) Direct Costs:					Subtotal Labor	2,240.00	Subtotal Mat'l	1,819.76	Subtotal Equip.	97.76
1.08	Taxes/Insurance: FICA, FUI, SUI, and Workmen's Comp. at 27					% of Item 1.0711 =	604.80	4.5% Sales Tax	81.89	4.5% Sales Tax	4.40
1.09	Total Direct Costs					Total Labor	2,844.80	Total Mat'l	1,901.65	Total Equip.	102.16

SUBCONTRACT COSTS		
Item No.	Subcontractor Name (List totals from attached SC-1 forms)	Total Cost
A	B	C
2.01	SAFWAY SCAFFOLD	3,961.35
2.02	SPECIAL RENOVATIONS	733.10
2.03	GIBBS MASONRY	2,521.03
2.04		
2.05		
2.06		
2.07		
2.08		
2.09		
2.09	Total Subcontract Costs	7,215.48

SUMMARY		
Item No.	Description	Total Cost
3.01	Total Direct Labor Cost (Item 1.0711)	2,844.80
3.02	Total Direct Material Cost (Item 1.09J)	1,901.65
3.03	Total Equipment Cost (Item 1.09L)	102.16
3.04	Subtotal (3.01 + 3.02 + 3.03)	4,848.61
3.05	Overhead and Profit (15% x Item 3.04)	727.29
3.06	Subtotal (3.04 + 3.05)	5,575.90
3.07	Subcontractor Cost (Item 2.09)	7,215.48
3.08	GC Markup on Subcontractors (10% x Item 3.07)	721.55
3.09	Subtotal (3.06 + 3.07 + 3.08)	13,512.93
3.10	Additional Bond Cost	225.67
3.09	Total Change Order Cost (3.09 + 3.10)	13,738.60

Submitted By
Name: Venable Johnson, Jr.
Signature: 
Title: Project Manager
Date: Dec. 23, 1997

I have reviewed the costs proposed and find them to be reasonable (as proposed) (as marked).

AFS Signature:



Virginia Commonwealth University

January 15, 1998

Mr. Venable Johnson, Jr.
Project Manager
White Construction Company, Inc.
P. O. Box 728
Chester, Virginia 23831

Dear Mr. Johnson:

SUBJECT: Virginia Commonwealth University
Sanger Hall; Wall Repair
Project Code: 236-12708-9503
Change Order No. 5

CONSTRUCTION
MANAGEMENT

6 SOUTH LINDER STREET
P.O. Box 843003
RICHMOND, VIRGINIA 23284-3003

804 828-2525
FAX: 804 828-2528
TDD: 1-804 828-1120

Attached, for your information and action, is an executed copy of Change Order No. 5 for the above subject project. By receipt of this change order you are hereby authorized to perform the work as stated for an additional \$60,446.48 to your contract.

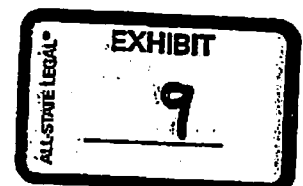
We appreciate your continued assistance to us during this project.

Should you have any questions, please call me at 828-2526 or Opi Leckzas at 828-5669.

Sincerely,

Leon T. Bare
Assistant Director
Construction Management

ewk
Attachments
cc: Mr. Opi Leckzas
Mr. Bob O'Connor
Mr. Al Shulze



VCU 000060

CONTRACT CHANGE ORDER

G.S. Form E&B CO-11 (12/96)

CO-11

Change Order Number: 5

Date: 01/08/98

PROJECT DESCRIPTION

Project Number: 236-12708-9503
 Institution/Agency: Virginia Commonwealth University
 Project Title: MCV Sanger Hall Wall Repair Phase II

CHANGE DESCRIPTION

TO: White Construction Company, Inc.

Gentlemen:

Under your contract dated December 16, 1996 for work at MCV Sanger Hall you are hereby authorized to make the following changes:

Install additional Hellfix anchors between Grids 5 and 9 in accordance with the Request for Proposal from Dunbar, Milby, Williams, Pittman & Vaughan, dated December 16, 1997 (copy attached), and the Proposal for Change #6 from White Construction Company, Inc., dated January 7, 1998 (copy attached).

and to ☒ add to ☐ deduct from the Contract Price, in accordance with the Contract Documents, the sum of
 Sixty Thousand Four Hundred Forty-Six and 48/100 dollars \$60,446.48

There will be an extension of forty-three (43) days for contract completion.

The contract completion date was February 6, 1998 and will now be March 21, 1998.

(Failure to include a change to time shall waive any change to the time allowed by the contract for completion of the Work unless the parties mutually agree in writing to postpone a determination of the change to time resulting from the change order. Such determination may not be postponed more than 45 days from date of approval of this change order by agency.)

CONTRACT COST SUMMARY

AMOUNT OF ORIGINAL CONTRACT	TOTAL ADDITIONS	TOTAL DEDUCTIONS	AMOUNT OF CONTRACT TO DATE
\$657,217.50	+ \$129,900.18	- \$ 0.00 -	= \$787,117.68

CHANGE AUTHORIZATION

Issued By: <i>Alvin G. Schuler</i> / ST Dunbar, Milby, Williams, Pittman & Vaughan		01/08/98
Architect/Engineer	Date	
Approved / Recommended By: <i>[Signature]</i>		1/9/98
Agency Representative	Date	
Accepted By: <i>[Signature]</i>		1-8-98
Contractor	Date	

For use By The Governor's Designee For Individual Change Orders Over \$50,000 Or After The Cumulative Total of Change Orders Exceed 25% of the Original Contract Price	
Recommended By: <i>[Signature]</i> / 1/9/98	
Director, Division of Engineering & Buildings	Date
Approved: <i>[Signature]</i> / 1/21/98	
Director, Department of General Services	Date

Note: Attach a copy of the G.S. Form E&B CO-11a to this form when submitting the information copy of the CO-11 or when submitting a CO-11 to the Division of Engineering and Buildings for approval.

CHANGE ORDER JUSTIFICATION

G.S. Form E&B CO-11a (12/96)

CO-11a

Project Number 236-12708-9503

Change Order Number: 5

Date: 01/08/98

INITIATOR

Initiated By: _____ Agency X A/E _____ Contractor

REASON FOR CHANGE ORDER (see reverse side)

_____ Unforeseen Site Conditions
X Existing building or utility conditions not as shown
_____ Change in Agency requirement
_____ Substitution/alternate method
_____ Item not as shown or specified
_____ Conflict/discrepancy in requirements
_____ Other (describe): _____

A/E's DESCRIPTION OF WORK INVOLVED

Install additional Helifix anchors to tie brick veneer to back-up masonry from Column Grid 5 to Column Grid 9 from Second Floor level to top relief angle below parapet.

A/E's EXPLANATION OF WHY WORK IS REQUIRED

Load tests on brick test panels indicate brick veneer in affected area is not adequately attached to building frame. Additional anchors are required to conform with BOCA wind load requirements.

Alvin G. Schuler/BT
Dunbar, Milby, Williams,
Pittman & Vaughan

Architect/Engineer

01/08/98

Date

A/E's RECOMMENDATION

Recommend approval ☒

Recommend disapproval ☐

WHEN CHANGE ORDER REQUIRES THE GOVERNOR'S DESIGNEE'S APPROVAL SUBMIT THE FOLLOWING SUMMARY INFORMATION

Contingency (per CO-8)	\$	
Less (or plus Change Orders #1 thru # 2)	\$	
Uncommitted Contingency	\$	

Approval of change orders which would have the effect of exceeding the approved project contingency must be processed concurrently with a revised G.S. Form E&B CO-8.

G.S. Form E&B CO-11a (12/96) Page 2 of 2

This Page To Be Completed By Agency

COST SHARING FOR DESIGN ERRORS AND OMISSIONS

Is this change order required in whole, or in part, because of a design error or omission?

No

If so, outline the proposed cost sharing, if any, by the responsible design professional:

N/A

ADDITIONAL SUPPORT FOR CHANGES IN
AGENCY REQUIREMENTS

- 1) When was the change in requirements (function, mission) known?

December 15, 1997

- 2) If known before construction bidding, why were the needed changes excluded from the bid package?

This was not known prior to bidding phase.

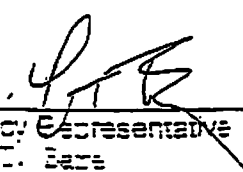
- 3) What quantitative impact would the lack of this change have on the mission or service provided by the agency?

Deterioration of brick makes this change order imperative.

- 4) Why can the work not be packaged and bid separately?

Bidding this work would not be cost effective. Current conditions are a hazard to public safety.

By


Agency Representative
John T. Bane

1-2-98
Date

DUNBAR, ILBY, WILLIAMS, PITTMAN, VAUGHAN

Consulting Structural Engineers

A Professional Corporation With Offices In Richmond And Charlottesville

611 Moorefield Park Drive, Suite A, Richmond, Virginia 23236-3695 Phone: 804 323-0656 Fax: 804 272-3916

ALVIN W. DUNBAR, PE
DENWOOD T. MILST, PE
C. NELSON WILLIAMS, IV, PE
KENNETH J. PITTMAN, PE
R. LINDLEY VAUGHAN, JR., PE

EDWARD S. FRANKEL, III, PE
S. KEITH RITTENHOUSE, PE
J. BRIAN WISSELEY, PE
ALVIN J. SCHULZE, PE
BETTY M. THOMPSON

December 16, 1997

Venable Johnson
White Construction Company, Incorporated
P. O. Box 728
Chester, Virginia 23831

RE: MCV Sanger Hall

Dear Venable:

Please develop a cost proposal to install additional stainless steel 8mm Helifix Dryfix anchors in accordance with Helifix specifications between column grids 5 and 9 as follows:

A. Brick panel below top relief angle.

1. Install two lines of five anchors each, spaced 3' o.c. horizontally and 8" o.c. vertically, below the existing line of five Helifix anchors presently located about 16" below the top relief angle.
2. Install additional lines of five anchors each spaced, 3' o.c. horizontally and 16" o.c. vertically, below the two lines noted above down to within 16" of the existing line of five Helifix anchors presently located about 16" above the Penthouse Level relief angle.

- B. Install additional lines of five anchors each, spaced 3' o.c. horizontally and 2' o.c. vertically (starting 16" maximum below each relief angle), in all brick panels below the Penthouse Level relief angle.

Very truly yours,



Alvin J. Schulze, PE

AJS/koh

cc: Orl Lackasas - VCU/Gilbane
Bob O'Connor - VCU/C&F
Eco Boynton - BRR

VCU 000064

WHITE

P. O. BOX 728
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.

PROPOSAL FOR CHANGE #6

January 7, 1998

Dunbar, Milby, Williams, Pittman & Vaughan
611 Moorefield Park Drive, Suite A
Richmond, Virginia 23236

Attention: Al Schulze

RE: SANGER HALL - WALL REPAIRS

Dear Al,

Please find enclosed our Proposal for Change #6, your Change Order #5. The work included in this PFC includes all work associated with the installation of Helifix Dry Wall Anchors between Bays 5 and 9 at Sanger Hall, in addition to those already installed under work covered by C.O. #2

White Construction Co. has rebricked all areas that had been opened before the "Pull Test". All other work covered by the project documents has been stopped until the Helifix Pins can be installed. This is first and foremost a safety matter for White Construction Co. employees and our Subcontractor's employees.

Our scaffolding contractor will move the work deck from level ten up to the penthouse level. We expect this move and the other deck moves to take one day each to complete. Once the deck is moved, the installation contractor will install the pins in the four bays that are decked. The next day the decking will be moved down to the twelfth level. This process will be repeated until the decking is down back to the 10th level. At this point we will install the pins on levels 10, 9, and 8.

to MARCH 21st 21, VCU 1-8-98

Due to the delay caused by the additional repair work, White Construction Co. is requesting a forty-three day time extension, until March 24, 1998, with this PFC. This includes six days for scaffold deck moves, five days to install the pins, and 32 days delay from December 12th until January 14, 1998, when we can reasonably expect to start back to work. Should a signed change order be received before the 14th, we would be willing to adjust the costs associated with fewer days.

VCU 000065

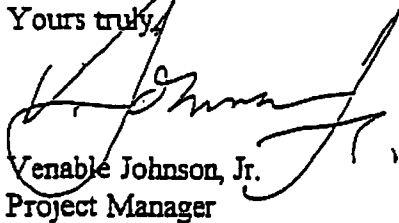
January 7, 1998

Dunbar, Milby, Williams, Pittman and Vaughan

This project was bid assuming that the bulk of the work would occur between March and the end of September. Completing Masonry work in January and February is very different than working in warmer weather. We do not feel that White Construction Co. should suffer because the existing conditions of the building are worse than anyone could have imagined. Therefore, White Construction Co. intends to request a time extension for the project, should the weather so warrant. We will in the next several working days send you a letter containing the basis for that time extension.

If you have any questions, please give me a call.

Yours truly,



Venable Johnson, Jr.
Project Manager

VJ/cj

Enclosure

VCU 000066

GENERAL CONTRACTOR ESTIMATE FOR CHANGE ORDER

Form GC-1
(12/88)

Project Code: 236-12708-9503
Agency: VA. COMMONWEALTH UNIVERSITY
Project: SANGER HALL WALL REPAIR, PHASE 2

General Contractor: WHITE CONSTRUCTION CO.
Change Description: ADD ADDITIONAL BRICK WALL TIES

GENERAL CONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equip.	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Excl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	B	C	D	E	F = C x E	G	H = F x G	I	J = C x I	K	L = C x K
1.01	HELIFIX WALL PINS, A.S.	462	Ea.					4.25	1,963.50		
1.02	HELIFIX WALL PINS	1,187	Ea.					4.00	4,748.00		
1.03	5MM DRILL BITS	10	Ea.					16.00	160.00		
1.04	5MM S.D.S. DRILL BITS	28	Ea.					24.00	672.00		
1.05	Supervision	41	Days	8/Hr. Day	328	17.50	5,740.00				
1.06	TRAILER RENTAL	43								2.83	121.69
1.07	TELEPHONE	43								3.28	141.04
1.08	Mason Labor	17	Days	8/Hr. Day	136	17.50	2,380.00				
1.09	Subtotal from Estimate Continuation Sheets								147.00		
1.07	Subtotal (S/T) Direct Costs:					Subtotal Labor	8,120.00	Subtotal Mat'l	7,690.50	Subtotal Equip.	262.73
1.08	Taxes/Insurance: FICA, FUI, SUI, and Workmen's Comp. at 27					% of Item 1.07/11 =	2,192.40	4.5% Sales Tax	346.07	4.5% Sales Tax	11.02
1.09	Total Direct Costs					Total Labor	10,312.40	Total Mat'l	8,036.57	Total Equip.	273.75

SUBCONTRACT COSTS		
Item No.	Subcontractor Name (List totals from attached SC-1 forms)	Total Cost
A	B	C
2.01	SAFWAY SCAFFOLD	19,948.07
2.02	SPECIAL RENOVATIONS	14,630.61
2.03		
2.04		
2.05		
2.06		
2.07		
2.08		
2.09		
2.09	Total Subcontract Costs	34,578.68

SUMMARY			
Item No.	Description		Total Cost
3.01	Total Direct Labor Cost (Item 1.07/11)		10,312.40
3.02	Total Direct Material Cost (Item 1.09/1)		8,036.57
3.03	Total Equipment Cost (Item 1.09/1)		273.75
3.04	Subtotal (3.01 + 3.02 + 3.03)		18,623.52
3.05	Overhead and Profit (15% x Item 3.04)		2,793.53
3.06	Subtotal (3.04 + 3.05)		21,417.05
3.07	Subcontractor Cost (Item 2.09)		34,578.68
3.08	GC Markup on Subcontractors (10% x Item 3.07)		3,457.87
3.09	Subtotal (3.06 + 3.07 + 3.08)		59,453.60
3.10	Additional Bond Cost		992.88
3.09	Total Change Order Cost (3.09 + 3.10)		60,446.48

Submitted By:

Name: Venable Johnson, Jr.

Signature: 

Title: Project Manager

Date: January 7, 1998

I have reviewed the costs proposed and find them to be reasonable (as proposed) (as marked).

AF Signature:

ESTIMATE CONTINUATION SHEET

(Attach to Form GC-1, SC-1, or SS-1 as necessary for continuation of the direct cost estimates.)

Project Code: 236-12708-9503

Agency: VA COMMONWEALTH UNIVERSITY

Project: SANGER HALL WALL REPAIR, PHASE2

Performing Contractor: WHITE CONSTRUCTION CO.

ADD ADDITIONAL BRICK WALL TIES

Change Description:

GENERAL CONTRACTOR DIRECT COSTS

Scope Description				Direct Labor				Direct Material		Direct Equipment	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Excl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	B	C	D	E	F = C x E	G	H = F x G	I	J = C x I	K	L = C x K
	MORTAR	4	Bags					11.75	47.00		
	FREIGHT	1	EA					100.00	100.00		
Page Subtotals (Carry Forward To Line 1.09)				Subtotal Labor				Subtotal Mat'l	147.00	Subtotal Equip	

VCU 000068

To: VENABLE Johnson
 From: Martin Carlson

708-2842

SUBCONTRACTOR ESTIMATE FOR CHANGE ORDER

Form SC-1
 (12/05)

Project Code:
 Agency:
 Project:

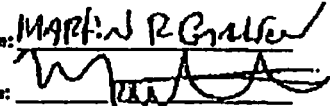
General Contractor:
 Subcontractor:
 Subcontractor Trade:

Change Description:

SUBCONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equipment	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Hours	Hourly Wage Rate, Incl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A			0	E	F=GxE	- 0	H=FxD	I	J=Gi	K	L=OxK
1.01	Intermittent Scaff	43								19.89	855.27
1.02	DECK MOVES	1		32	128	26.00	3328.00				
1.03	HALF DECK MOVES	5		16	128	18.00	2304.00				
1.04	SCAFFOLD RENTAL	43								206.02	8858.86
1.05											
1.06											
1.07											
1.08											
1.09											
1.09	Subtotal from Estimate Continuation Sheets										
1.07	Subtotal (S/T) Direct Costs:					Subtotal Labor	5632.88	Subtotal Mat'l		Subtotal Equip.	9774.13
1.08	Taxes/Insurance: FICA, FUR, Slt, and Workmen's Comp. at 27.75					% of Item 1.07(1)	1562.88	4.9% Sales Tax		4.3% Sales Tax	437.14
1.09	Total Direct Costs					Total Labor	7194.88	Total Mat'l		Total Equip.	10151.27

SUB-SUBCONTRACT COSTS		
Item No.	Sub-Subcontractor Name (List totals from attached SS-1 forms)	Total Cost
A		0
2.01		
2.02		
2.03		
2.04		
2.05		
2.06		
2.06	Total Sub-Subcontract Costs	

SUMMARY		
Item No.	Description	Total Cost
3.01	Total Direct Labor Cost (Item 1.07(1))	7194.88
3.02	Total Direct Material Cost (Item 1.09(1))	
3.02	Total Equipment Cost (Item 1.09(1))	10151.27
3.04	Subtotal (3.01+3.02+3.03)	17,346.15
3.05	Overhead and Profit (12% of Item 3.04)	2081.54
3.06	Total Subcontractor Cost (3.04+3.05)	19,427.69
3.07	Sub-Subcontractor Cost (Item 2.06)	
3.08	Total Cost Reported to GC (3.06+3.07)	19,427.69

Submitted By:
 Name: MARTIN R. Carlson
 Signature: 
 Title: Project Manager
 Date: 1/7/97

SUBCONTRACTOR ESTIMATE FOR CHANGE ORDER

Form SC-1
(10/89)

Project Code: 236-12708-9503
Agency:
Project: Berger Hall Wall Repair

General Contractor: White Construction Co., Inc.
Subcontractor: Special Renovations, Inc.
Subcontractor Trade: Asbestos Abatement &
Black Dens Sub

Change Description: Drill Holes and Install Additional Anchor Pins (No moving of Scaffolding)

SUBCONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equipment	
Item No.	Description	Quantity	Qty Units	Direct Labor Rate Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Incl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A	B	C	D	E	F=DxE	G	H=F+G	I	J=IxC	K	L=KxC
1.01	Drill Holes and Install	1570	EA	.50	705	10.75	8,438.75	.30	471.00	.20	314.00
1.02	Anchor Pins Provided by Other										
1.03											
1.04	Supervisors	80	HR	1	80	17.50	1,400.00	0	0	0	0
1.05											
1.06											
1.07											
1.08											
1.09	Subtotal from Estimate Construction Direct										
1.10	Subtotal (B71) Direct Cost				20.97	Subtotal Labor	9003.75	Subtotal Mat'l	471.00	Subtotal Equip.	314.00
1.11	Taxes/Insurance:			FICA, FUI, UI, and Workmen's Comp. at		% of Total Labor	2063.19	4.0% Other Tax	21.20	4.0% Equip Tax	12.56
1.12	Total Direct Costs					Total Labor	11,901.94	Total Mat'l	492.20	Total Equip.	326.56

SUB-SUBCONTRACT COSTS		
Item No.	Sub-Subcontractor Name	Total Cost
A	B	C
2.01		
2.02		
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SAFWAY

ATTACHMENT #1

SAFWAY STEEL PRODUCTS INC. • 270 LUMBOUR AVENUE • P.O. BOX 11308 • RICHMOND, VA 23211 (804) 355-5555 FAX (804) 355-7777

July 10, 1997

Venable Johnson, Jr.
White Construction
1305 West Hundred Road
Chester, Virginia 23831

Subject: Sanger Hall Project

Dear Venable:

Due to the problems that you are experiencing at Sanger Hall, your rental costs for the scaffolding will be impacted. The costs that you should anticipate are as follows:

#1. Phase I Scaffolding - \$113.46 per day, plus tax

#2. Phase II Scaffolding - \$237.25 per day, plus tax

Venable, please note that during the dismantling phase we plan to bring the scaffold down to the ground in an expedient manner. If we are required to do only one level at a time because of the changes that have occurred it will result in a time and production inefficiency that will also impact your scaffold costs for the project.

Sincerely,



Martin R. Carlson
Branch Manager

VCU 000071

WHITE

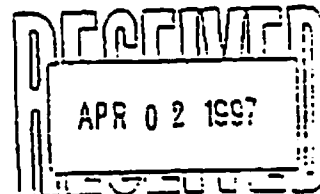
ATTACHMENT #2

P. O. BOX 728
1305 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC. SUBCONTRACT

Satway Steel Products, Inc.
P. O. Box 11308
Richmond, VA 23230

Contract #285-4



DATE: January 24, 1997

PROJECT NAME: Sanger Hall Wall Repair, Phase II, MCV Campus

SUBSTANTIAL COMPLETION DATE:

No. OF CALENDAR DAYS: 240

CONTRACTOR: WHITE CONSTRUCTION CO., INC., its successors and/or assigns

ARCHITECT: Boynton Rothschild Rowland

DATE OF PLANS/SPECS: October 20, 1996

NO. OF ADDENDA: One; Clarification #1

CONTRACT DOCUMENTS: The Contract Documents include this Subcontract, the plans, drawings, specifications, approved shop drawings and submittals, and the prime contract to the extent it is not inconsistent with the terms hereof. Every obligation imposed upon Subcontractor by any of the Contract Documents shall be considered material as between Contractor and Subcontractor.

THE WORK: Subcontractor shall furnish all supervision, labor, materials, tools, equipment and services, permits, fees, and taxes required by the Contract Documents in the following division(s)/section(s) together with all work reasonably inferable therefrom: - Furnish, engineer and erect all scaffolding per contract document requirements including stair tower to roof and equipment hoist. Erect first two decks for two months. Erect remaining scaffolding to roof for an additional two months. There shall be two working deck levels available at all times and an additional non loaded deck for stairs purposes. There are to be twelve additional deck moves as requested by contractor. Rental time starts when scaffolding is complete and ready for use.

Responsible for any site areas, grass, paving, trees and shrubs, etc. that you may damage or destroy in the course of your work.

~~Subcontractor is responsible for his own cutting, patening, excavating, backfilling, and compacting.~~ Subcontractor shall check all Contract Documents for the Work and shall verify dimensions and figures shown before laying out and proceeding with the Work, and shall coordinate with Contractor and all other trades on the project. Subcontractor shall inspect and verify all conditions which affect the installation of his work and report any issues to the Contractor before proceeding with his work. Subcontractor agrees to perform any additional work within its trade required of Contractor, with the price for such work to be determined in accordance with the terms of the prime contract less Contractor's profit and overhead. Contractor will accept no charges for extras without its prior written authorization. Subcontractor may be required to submit daily field reports per Contractor's format.

Subcontractor agrees that the Work includes all labor and materials required for a complete and operational system, and that all Work shall be performed in a good and workmanlike manner.

Subcontractor agrees to be responsible for removal of all trash, excess excavation, and debris from the site as needed or to participate in dumpster costs with Contractor in proportion to the amount of trash generated as assessed by the Contractor. Upon 24 hours notice of any default with respect to any of these obligations, Contractor may backshare Subcontractor for any costs incurred by reason of such default.

SUBCONTRACT SUM: Forty-Five Thousand Fifty-Five and 29/100 Dollars (\$45,055.39)

To the extent any prices are to be based upon unit prices, the price shall be computed in accordance with those unit prices detailed in Exhibit A, and Subcontractor shall document each unit appropriately. [Add Exhibit A, if applicable]

PAYMENT TERMS: Subcontractor shall submit for Contractor's approval a Schedule of Values showing labor and material breakdowns by phase and item of Work with this Subcontract. Payment applications detailing completion of the Work in accordance with the approved Schedule of Values and containing documentation required by the Contract Documents must be submitted by the 25th day of each month for payment by the 30th day of the following month subject to the other terms of this Subcontract. Subcontractor shall provide partial and/or final lien waivers for themselves and for their subcontractors and suppliers upon request.

BY CONTRACTOR'S LIEN WAIVER FORM.

SAFWAY

ATTACHMENT #3

Number 4/22/97
 Date RENTAL
 TYPE PAGE 4

AY STEEL PRODUCTS
 TUMOUR AVENUE
 BOX 11306
 RICHMOND, VA 23230
 # 804-355-6523
 # 804-355-7776

POSTED
 3/31/97

Job No. 104600
 CONSTRUCTION
 1 W. HUNDRED RD
 BOX 725
 RICHMOND, VA 23831

Job No. 00009
 SANGER HALL E AND D JOBS

RICHMOND, VA

SP# 9804

Job Phone No.

Customer Contact

ROBIE

Order #	Customer Ref #	Ordered By	Office Phone	Project	Order Date	Sales Rep
0000000000		WILLIAMS	804/6886-11	UNCLAS		CC
Order #	Ship To	Bill To	Terms	Amount	Due Date	
0000000000	OFF WRT/DELIVERY		NET 30			
Order #	Description	Quantity				

IRPF GUARD R POST F W/GL CORNER
 SHIPMENT# 10942 04/03/97 30
 RETURN# 8957 04/13/97 30

COUPLING PIN W/ SNAP BUTTON
 SHIPMENT# 10942 04/03/97 300
 RETURN# 8957 04/13/97 300

387 HERCIE DIAG GOOSER 5' X 7'
 SHIPMENT# 10947 04/03/97 1
 RETURN# 8957 04/13/97 1

308 LABOR CHARGES UP 1.00

308 1.2 LABOR SUB-CONTRACT 1.00

308 1.3 SAFETY TRUCKING 1.00

BILLING CYCLE 4/01/97 TO 4/28/97

LABOR TOTAL:
 RENTAL TOTAL:
 FREIGHT TOTAL:
 INVOICE TOTAL:
 VA STATE TAX:
 RICHMOND (AND C COUNTY) TAX:
 RICHMOND CITY TAX:
 GRAND TOTAL:

255
 0/66
 4000
 OK to pay
 per agreement
 10/10 H. MARI
 6/2/97

NO
 REMINDER
 FOR
 CONTRACT
 RETURN

111

351

VCU 000073

ATTACHMENT #4

6. VENDOR TO EMPLOYEE	DESCRIPTION	INVOICE NUMBER	CHECK NUMBER	DATE	ITEM DESCRIPTION	ESTIMATED AMOUNT	ACTUAL AMOUNT	QUANTITY	HOURS	PERIOD & YEAR	GENERAL ACCOUNT	CREDIT REFERENCE
	NCV Sanger Hall II Superintendent			03/06/97		31,600.00						
Peck	William R. Peck, Jr.			06/13/97			650.00		40.00	06 97 004030	PY355\0	
Peck	William R. Peck, Jr.			06/13/97	Actual Burden		01.01			06 97	PY355\0	
Peck	William R. Peck, Jr.			06/20/97			700.00		40.00	06 97 004030	PY356\0	
Peck	William R. Peck, Jr.			06/20/97	Actual Burden		00.13			06 97	PY356\0	
Peck	William R. Peck, Jr.			06/27/97			700.00		40.00	06 97 004030	PY357\0	
Peck	William R. Peck, Jr.			06/27/97	Actual Burden		00.13			06 97	PY357\0	
Peck	William R. Peck, Jr.			07/04/97			700.00		40.00	07 97 004030	PY357\0	
Peck	William R. Peck, Jr.			07/04/97	Actual Burden		00.13			07 97	PY357\0	
Peck	William R. Peck, Jr.			07/11/97			700.00		40.00	07 97 004030	3\0	
Peck	William R. Peck, Jr.			07/11/97	Actual Burden		00.13			07 97	PY360\0	
	Job Costs					31,600.00	3,004.36		200.00			
Peck	Employee Totals William R. Peck, Jr.						3,004.36		200.00			
	General Ledger Totals Cost - Direct Labor						3,450.00		200.00		004030	
	Company Costs					31,600.00	3,004.36		200.00			
Peck	Employee Totals William R. Peck, Jr.						3,004.36		200.00			
	General Ledger Totals Cost - Direct Labor						3,450.00		200.00		004030	

$$700.00 \div 40 \text{ HRS.} =$$

$$\# 17.50 \text{ HR.}$$

$$88.13 \div 40 \text{ HRS.} =$$

$$2.20 \text{ HR.}$$

$$17.50 + 2.20 = 19.70 \text{ HR.} \times 8 \text{ HRS.} = \# 157.60$$

PER
DAY

ORDER CONFIRMATION

This Is Not An Invoice
Do Not Pay From This

Customer: WHITE CONSTRUCTION CO INC
PO BOX 728

06859

Date: FEBRUARY 27, 1997

CHESTER, VA 23831

ATTACHMENT #5

Phone: 804-751-6943

Job Location: RICHMOND, VA

Project Name: MCV

Ordered By: ROBBIE

P.O.#:

Terms: 6 MONTHS RENTAL NET 10

Est. Delivery Date: 3/03/97

Salesperson: KEFF CREECH

Salesperson Phone #: 804-520-5733

Model: ~~825~~
825

Serial Number: ~~21-27111~~
20 25976

Furniture and Optional Equipment Per Specifications or as Quoted

Customer Copy

Acton Mobile Industries, Inc. assumes no liability for non-coded setups.

'ALL RISK' Physical Loss or Damage Insurance coverage shall be provided by Lessee for the full value of the Equipment naming Acton Mobile Industries Inc. as certificate holder and 'loss payee'. Monthly insurance premium if obtained through Acton is 6 percent per annum but not less than \$35.00 per month, subject to a deductible amount equivalent to 30 percent of the value of the trailer.

VALUE OF TRAILER FOR INSURANCE PURPOSES (Rental or Lease Option only): \$4,953.00

☒ RENTAL OR LEASE OPTION PROGRAM

Monthly rate for 6 months \$ 85.00

Monthly Insurance, if applicable CUSTOMER

State and Local Sales Taxes 3.83

Delivery Freight 50.00

Setup / Block, Level 170.00

Refundable Security Deposit 85.00

Return Freight Deposit unless
payable upon occurrence When Occurs

Others
Total Amount of First Invoice \$ 403.83

SELLING PRICE

SALES TAX:

TOTAL DELIVERY PRICE:

ACCEPTED:

WHITE CONSTRUCTION CO INC

BY: *[Signature]*

☐ LEASE WITH OPTION TO PURCHASE (if applicable):

100% of paid in rentals are applied toward selling price. A carrying charge of % of the original value is added to the purchase price for each month of the rental period.

TITLE: *[Signature]*

DATE: 3/11/97

PLEASE SIGN AND RETURN CONFIRMATION COPY • RETAIN SECOND COPY FOR YOUR FILES

ATTACHMENT #6

Date - 14 JUL 1997 Time - 11:59:59

White Construction Company, Inc.
VENDOR HISTORY 6 Y 109

INVOICE NUMBER	COST PHASE CODE	DATE	DESCRIPTION	QUANTITY	INVOICE AMOUNT	UNPAID AMOUNT	PAID AMOUNT	ATTENTION	DEBIT NUMBER
Vendor	Bell		Bell Atlantic - Va.						
Job	295		NCU Sanger Hall II						
4/21/97	01 73	A 04/21/97	Sanger Hall phon		381.07				
4/21/97	01 73	A 04/21/97	Check # 008985				381.07		
5/20/97	01 73	A 05/20/97	Sanger AT&T		85.75				
5/20/97	01 73	A 05/20/97	Check # 008987				85.75		
6/13/97	01 73	A 06/13/97	Sanger telephone		96.03				
6/13/97	01 73	A 06/13/97	Check # 008988				96.03		
			Cost Code Total		563.05		563.05		
			Phase Total		563.05		563.05		
			Job Total		563.05		563.05		
			Vendor Total		563.05		563.05		
			Company Total		563.05		563.05		

7-1-97 END

113.33

7-1-97 676.58 Total

AVERAGE BILL

85.75

96.03

113.33

295.11

3.28 PER DAY

295.11 ÷ 90 DAYS = 3.28 PER DAY



ATTACHMENT # 8

STAINLESS STEEL WALL TIE SYSTEMS

Q U O T A T I O N

DATE: AUGUST 21, 1987
PROJECT: SANGER HALL
COMMON WEALTH UNIVERSITY
VIRGINIA
COMPANY: WHITE CONSTRUCTION CO. INC.
CHESTER, VIRGINIA
ATTENTION: VENABLE JOHNSON

■ HELIFIX 304 STAINLESS STEEL REMEDIAL WALL TIES

350 PCS	HRT80/65 X 170MM ASYMMETRICAL HELIFIX TIES	\$ 4.25 EACH
50 PCS	HRT80/125MM 8MM X 125MM HELIFIX TIES	4.00 EACH
5 PCS	5MM ROTARY PERCUSSION DRILL BITS	12.00 EACH
10 PCS	SDS 5MM (3/16) X 12" DRILL BITS	24.00 EACH
2	8MM DRYFIX SETTING TOOLS	165.00 EACH
2	8MM EXTENSION TOOL	45.00 EACH

■ FREIGHT EXTRA

■ ALL PRICES ARE QUOTED IN U.S. FUNDS

TERMS: NET 30 DAYS - SUBJECT TO CREDIT APPROVAL
DELIVERY: STOCK TO 2 WEEKS
TELEPHONE 1-800-561-3025
FAX 416-745-1017

HELIFIX Ltd. 30 Millwick Drive, Weston, Ontario M5L 1Y3 Telephone 1-800-561-3025 Fax (416) 745-1017

VCU 000077

SHADE & WISE

INCORPORATED
 BUILDING MATERIALS
 P.O. BOX 11212 / RICHMOND, VIRGINIA 23220
 PHONE 355-2556
 FAX 804/355-3424

TO: Venable Whinn DATE: 5-9-97
 COMPANY: White Point FAX: _____

***** TELEFAX *****

FROM: Frank Wise PAGES TO FOLLOW: 0

NOTES: Per our conversation price on Motor

	100lb dots
Special Light - Type N	7.40lb
Special Light - Type S	11.25lb
C 239 Type N	12.85lb
C 239 Type S	14.10lb

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS PRIVILEGED INFORMATION INTENDED ONLY FOR THE USE OF THE ADDRESSEE ABOVE.

IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, DISSEMINATION, DISTRIBUTION, OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED.

IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE.

THANK YOU . . .

VCU 000078

WHITE

P. O. BOX 728
1305 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC. SUBCONTRACT

Safway Steel Products, Inc.
P. O. Box 11308
Richmond, VA 23230

Contract #285-4

DATE: January 24, 1997

PROJECT NAME: Sanger Hall Wall Repair, Phase II, MCV Campus

SUBSTANTIAL COMPLETION DATE:

No. OF CALENDAR DAYS: 240

CONTRACTOR: WHITE CONSTRUCTION CO., INC., its successors and/or assigns

ARCHITECT: Boynton Rothschild Rowland

DATE OF PLANS/SPECS: October 20, 1996

NO. OF ADDENDA: One; Clarification #1

CONTRACT DOCUMENTS: The Contract Documents include this Subcontract, the plans, drawings, specifications, approved shop drawings and submittals, and the prime contract to the extent it is not inconsistent with the terms hereof. Every obligation imposed upon Subcontractor by any of the Contract Documents shall be considered material as between Contractor and Subcontractor.

THE WORK: Subcontractor shall furnish all supervision, labor, materials, tools, equipment and services, permits, fees, and taxes required by the Contract Documents in the following division(s)/section(s) together with all work reasonably inferable therefrom: - Furnish, engineer and erect all scaffolding per contract document requirements including stair tower to roof and equipment hoist. Erect first two decks for two months. Erect remaining scaffolding to roof for an additional two months. There shall be two working deck levels available at all times and an additional non loaded deck for logistics purposes. There are to be twelve additional deck moves as requested by contractor. Rental time starts when scaffolding is complete and ready for use.

THE SUB
Responsible for any site areas, grass, paving, trees and shrubs, etc. that you may damage or destroy in the course of your work.

~~Subcontractor is responsible for his own cutting, piling, excavating, backfilling, and compacting.~~ Subcontractor shall check all Contract Documents for the Work and shall verify dimensions and figures shown before laying out and proceeding with the Work, and shall coordinate with Contractor and all other trades on the project. Subcontractor shall inspect and verify all conditions which affect the installation of his work and report any issues to the Contractor before proceeding with his work. Subcontractor agrees to perform any additional work within its trade required of Contractor, with the price for such work to be determined in accordance with the terms of the prime contract less Contractor's profit and overhead. Contractor will accept no charges for extras without its prior written authorization. Subcontractor may be required to submit daily field reports per Contractor's format.

Subcontractor agrees that the Work includes all labor and materials required for a complete and operational system, and that all Work shall be performed in a good and workmanlike manner.

Subcontractor agrees to be responsible for removal of all trash, excess excavation, and debris from the site as needed or to participate in dumpster costs with Contractor in proportion to the amount of trash generated as assessed by the Contractor. Upon 24 hours notice of any default with respect to any of these obligations, Contractor may backcharge Subcontractor for any costs incurred by reason of such default.

SUBCONTRACT SUM: Forty-Five Thousand Fifty-Five and 89/100 Dollars (\$\$45,055.89)

To the extent any prices are to be based upon unit prices, the price shall be computed in accordance with those unit prices detailed in Exhibit A, and Subcontractor shall document each unit appropriately. [Add Exhibit A, if applicable]

PAID
PAYMENT TERMS: Subcontractor shall submit for Contractor's approval a Schedule of Values showing labor and material breakdowns by phase and item of Work with this Subcontract. Payment applications detailing completion of the Work in accordance with the approved Schedule of Values and containing documentation required by the Contract Documents must be submitted by the 25th day of each month for payment by the 30th day of the following month subject to the other terms of this Subcontract. Subcontractor shall provide partial and/or final lien waivers for themselves and for their subcontractors and suppliers upon request.

BY CONTRACTORS LIEN WAIVER FORM.



All materials shall be stored on site adequately protected from damage and/or theft. Original supplier invoices for stored materials must be submitted with payment applications in order to receive payment for stored materials, if such payments are allowed under the contract. No payments will be made for materials stored off site.

This agreement must be executed by both parties prior to any payments being made under this agreement. No payments will be made under this agreement without certificate of insurance required under paragraph "Insurance" being supplied to the Contractor.

7/1/11 Certificates or applications for payment are not binding upon Contractor and shall not be deemed an acceptance of Subcontractor's Work. Payment from Owner to Contractor for Work performed by Subcontractor is a condition precedent to Contractor's duty to make any payment to Subcontractor for such Work. ~~Retainage in the amount of 5% of the amount paid by Owner for Work performed by Subcontractor shall be withheld until completion and acceptance of the project by Owner and Architect.~~

7/1/11 Subject to the above precedent, final payment shall be due thirty days after completion of the Work, acceptance by the Owner and any governmental authorities having jurisdiction, compliance with all Subcontract obligations, and receipt of payment from Owner.

Subcontractor agrees to provide any and all documentation required by Owner, governmental authorities, or Contractor before payment is due to Subcontractor.

DISPUTES: As a condition precedent to the right to file suit for breach of this Subcontract, the parties hereto agree to submit any claims arising under or related to this Subcontract to mediation in good faith with The McGammon Mediation Group or some other mutually agreed mediator. If the parties are unable to obtain a settlement through mediation, the parties agree that all suits at law or equity will be filed solely in the Circuit Court of the City of Richmond, Virginia, or such other venue as the parties may agree upon, and they hereby waive their right to demand trial by jury. ~~In the event that Contractor substantially prevails in such mediation and/or litigation, Subcontractor shall pay to Contractor its reasonable attorney's fees incurred.~~

7/1/11 * SEE ADDENDUM I

7/1/11 INSURANCE: Before commencement of the Work, Subcontractor shall procure automobile liability, workers compensation and employer's liability, broad form comprehensive general liability, including contractor's protective liability, broad form contractual liability insurance, and completed operations coverage and/or such other insurance as may be necessary to protect against all liability that may be chargeable to Contractor, Owner, Owner's representatives, or Subcontractor on account of accidents or injuries caused by acts or omissions of Subcontractor and its independent contractors engaged in the Work, and in amounts not less than that required of Contractor in the prime contract. Prior to commencing the Work, Subcontractor shall deliver certificates of insurance to Contractor which shall provide for 30 days' advance written notice by certified mail of cancellation, termination, or alteration of any insurance policy. The provisions in this paragraph in no way limit or relieve Subcontractor's obligation to indemnify Contractor as provided elsewhere within this Agreement. Contractor reserves the right to procure insurance on behalf of Subcontractor and to backcharge Subcontractor for its costs incurred including overhead/

7/1/11 ONLY IF SUBCONTRACTOR'S CURRENT POLICY BECOMES EXPIRED.

7/1/11 SAFETY: Subcontractor shall comply with OSHA and all statutory and/or contractual safety requirements applying to its Work and as initiated by Contractor. Subcontractor shall submit Material Safety Data Sheets for all products used.

SUBMITTALS: Subcontractor shall submit 7 copies of complete submittals together with the number of sets required for fabrication/installation by Subcontractor within 1 week of the date of this Subcontract. Subcontractor shall submit a list of all sub-subcontractors and suppliers it intends to use on this project prior to beginning the Work.

PROFESSIONAL CONDUCT: Subcontractor agrees to instruct its personnel to conduct themselves in a professional manner, to refrain from profanities and off-color comments, and to be sensitive to the Owner, its personnel and the public. Subcontractor shall maintain a drug- and alcohol-free project. Any violation of this provision will be cause for removal of the offending employee from the project solely at Subcontractor's cost, and may be basis for termination of this Subcontract.

7/1/11 COMPLIANCE WITH LAWS: Subcontractor agrees to abide by all laws, regulations, and ordinances in executing the Work, including without limitation OSHA and all safety and environmental laws. Subcontractor agrees that a failure to comply with any such requirements constitutes a material breach of this Subcontract. Subcontractor further agrees to indemnify Contractor and hold Contractor harmless for all civil or criminal penalties, corrective measures, cleanup costs, response costs or costs of remediation arising from or related to any actual or alleged violation of any law, and related to the Work, including claims for contribution and/or indemnity. Subcontractor agrees to reimburse Contractor for reasonable attorney's fees incurred with respect to Subcontractor's actual or alleged violation of any provision of this section.

7/1/11 TERMINATION: Contractor reserves the right to terminate this Subcontract should Subcontractor fail to correct any defaults under this Subcontract within three days after notice of such default. Contractor reserves the right to terminate Subcontractor for its convenience upon three days notice. Any improper termination for default made in good faith, shall be deemed to be a termination for convenience. In no event shall Subcontractor be entitled to lost profits or overhead for work not actually performed.

NON-WAIVER: Any failure of Contractor to insist upon any term of this Subcontract shall not terminate Subcontractor within three days after notice of termination shall not be deemed a waiver of any of Contractor's rights pursuant to this Subcontract.

INDEMNITY: Subcontractor agrees to indemnify Contractor against any claims, losses, costs, or expenses, including reasonable attorney's fees, arising from the defense of any mechanic's lien against Owner's property, the injury to or death of any person, damage to any property, or any violation of patent, trademark, or copyright laws arising from or related to the Work.

CAUSED BY SUBCONTRACTOR ☒

SCHEDULE: TIME IS OF THE ESSENCE OF THIS AGREEMENT. Subcontractor shall proceed within 48 hours of receiving notice to proceed and shall prosecute the Work diligently to completion. Subcontractor shall not be entitled to additional compensation for overtime or other costs associated with completing the Work in accordance with the schedule as it may be amended from time to time. Failure to complete Work within the time indicated on the construction schedule may be cause for Contractor to backcharge Subcontractor for liquidated or other damages which may be assessed due to such delays. For any delay or adverse impact caused by Contractor and/or by other subcontractors, Subcontractor shall be entitled only to an appropriate extension of time for completion. In no event shall Subcontractor be entitled to recover "delay" or "impact" damages from Contractor, except to the extent that Contractor recovers such damages from Owner for the specific delay or impact suffered by Subcontractor.


FLOW-DOWN RELATIONSHIP: Subcontractor is bound to Contractor in the same way that Contractor is bound to Owner, and Subcontractor shall bear all obligations and liabilities with respect to Contractor as Contractor has with respect to Owner. In the event of any inconsistency or conflict between the prime contract and this Subcontract, this Subcontract shall govern.

INSPECTION: Subcontractor agrees that Contractor or Owner may inspect or test material and workmanship required by this Agreement at any time. Subcontractor shall, without charge, replace any material or correct any workmanship failing to conform to the Contract Documents. Contractor may correct or have others correct nonconforming Work and backcharge Subcontractor for its cost incurred.

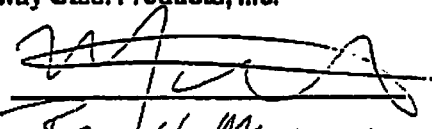
ASSIGNMENT: Neither this Agreement nor any invoices or obligations for payment made pursuant to this agreement may be assigned, in whole or in part, by Subcontractor without the written consent of Contractor.

WARRANTY: Subcontractor warrants its Work to the same extent that Contractor's Work is warranted under the prime contract.

White Construction Co., Inc.


Lloyd P. White, Jr.
President

Safway Steel Products, Inc.

By: 
Title: Gerald Manning
Dated: 4/1/87

The following individuals guarantee Subcontractor's performance of this Subcontract.

ADDENDUM I

March 24, 1997

White Construction Company, Inc.
P.O. Box 728
Chester, Virginia 23831

RE: Subcontract No. 285-4 Sanger Hall Wall Repair, Scaffolding Addendum I.

The following change in section named "DISPUTES" and so noted in the subcontract, shall have the following added to replace the stricken sentence pertaining to Attorney's fees.

"The party prevailing on a claim in such mediation and/or litigation, shall recover from the other party its reasonable Attorney's fees incurred with respect to that claim".

This Addendum I shall be incorporated into the above noted Subcontract and will supersede any prior wording to the contrary. This Addendum I and the Subcontract will be the total contract between the two parties in its entirety.

Safway Steel Products, Inc.

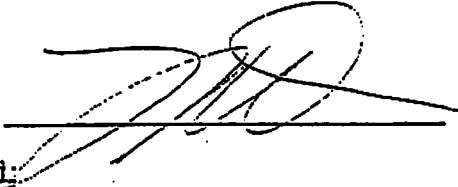
White Construction Co. Inc.



Martin R. Carlson
Branch Manager

3/24/97

Title:
Dated:



Title:
Dated:

ACORD CERTIFICATE OF LIABILITY INSURANCE						DATE (MM/DD/YY) 11/26/1997	
PRODUCER Alexander & Alexander Inc. Aon Risk Services 330 East Kilbourn Avenue, #450 Milwaukee WI 53202-3179			414-271-8420		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
INSURED Safway Steel Products Inc N14 W23733 Stone Ridge Drive #400 P.O. Box 1991 Milwaukee WI 53201			COMPANIES AFFORDING COVERAGE				
			COMPANY A RELIANCE NATIONAL INS CO				
			COMPANY B				
			COMPANY C				
			COMPANY D				
COVERAGE THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY	NGB0123772	10/01/1997	10/01/1998	GENERAL AGGREGATE \$ 2,000,000		
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG \$ 2,000,000		
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY \$ 2,000,000		
	<input type="checkbox"/> OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE \$ 2,000,000		
					FIRE DAMAGE (Any one fire) \$ 50,000		
					MED EXP (Any one person) \$ 50,000		
A	AUTOMOBILE LIABILITY	NKA0123773	10/01/1997	10/01/1998	COMBINED SINGLE LIMIT \$ 2,000,000		
A	<input checked="" type="checkbox"/> ANY AUTO	NKA0123774	10/01/1997	10/01/1998	BODILY INJURY (Per person) \$		
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$		
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE \$		
	<input checked="" type="checkbox"/> HIRED AUTOS						
	<input checked="" type="checkbox"/> NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$		
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY \$		
					EACH ACCIDENT \$		
					AGGREGATE \$		
	EXCESS LIABILITY				EACH OCCURRENCE \$		
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE \$		
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM						
A	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	NWA0123770	10/01/1997	10/01/1998	<input checked="" type="checkbox"/> WC STAT - 10TH PER \$ <input type="checkbox"/> EL EACH ACCIDENT \$ 2,000,000 <input type="checkbox"/> EL DISEASE - POLICY LIMIT \$ 2,000,000 <input type="checkbox"/> EL DISEASE - EA EMPLOYEE \$ 2,000,000		
A	THE PROPRIETOR/PARTNERS/EXECUTIVE OFFICERS ARE	NWA0123771	10/01/1997	10/01/1998			
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS PROJECT: SANGER HALL							
CERTIFICATE HOLDER WHITE CONSTRUCTION COMPANY 3601 W. HUNDRED ROAD CHESTER, VA 23831				CANCELLATION: SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT. EXCEPT 10 DAYS NOTICE FOR NON-PAYMENT. BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.			
AUTHORIZED REPRESENTATIVE Christopher H. Kondrick				AUTHORIZED REPRESENTATIVE Christopher H. Kondrick			
ACORD 25-8 (1/95)							



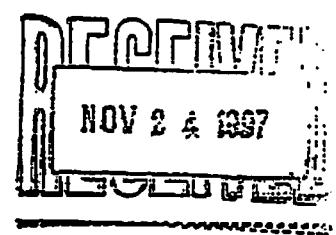
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P. O. BOX 728
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

WHITE

CONSTRUCTION COMPANY, INC.

November 4, 1997



Safway Steel Products
P. O. Box 11308
Richmond, Virginia 23230

Re: Sanger Hall Wall Repair - Phase II , MCV Campus
Revised Contract 285-4 Change Order #1

PFC #2 To furnish an additional 59 days of scaffold rental for Phase I, and an additional 60 days of scaffold for Phase II, per the plans and specifications as you have had submitted and had approved.

CHANGE ORDER #1 \$14,731.28

Original Contract Amount	\$45,055.89
Change Order #1	<u>14,731.28</u>

REVISED CONTRACT AMOUNT \$59,787.17

All other terms and conditions of the original contract remain unchanged.

WHITE CONSTRUCTION COMPANY, INC.

SAFWAY STEEL PRODUCTS, INC.

Lloyd P. White, Jr.

BY:

TITLE: Branch Manager

DATE: 11/5/97



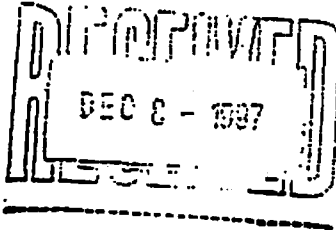
WC00504

EC
Kerry

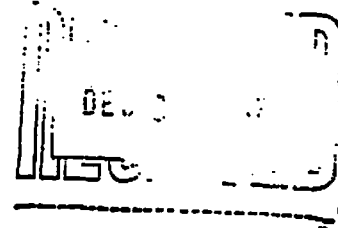
WHITE

285
P. O. BOX 72B
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.



December 3, 1997



Safway Steel Products
P. O. Box 11308
Richmond, Virginia 23230

Re: Sanger Hall Wall Repair - Phase II, MCV Campus
Revised Contract 285-4 Change Order #2

To furnish all Labor and Equipmenet as necessary to erect stairs from Level 10 to Level 11 between Columns 6 and 7 for work on replacement louver.

CHANGE ORDER #2 \$350.00

Original Contract Amount	\$45,055.89
Change Order #1	14,731.28
Change Order #2	<u>350.00</u>

REVISED CONTRACT AMOUNT \$60,137.17

All other terms and conditions of the original contract remain unchanged.


WHITE CONSTRUCTION COMPANY, INC.

SAFWAY STEEL PRODUCTS, INC.

BY: 

TITLE: _____

DATE: _____


Lloyd P. White, Jr.



WC00502



SAFWAY STEEL PRODUCTS INC.
314 W2843 State Route Dr Suite 400
Waukegan, WI 53188 (414) 523-8500
(800) 553-4772 • Fax (414) 523-8585

2104

CHANGE ORDER REQUEST

CUSTOMER: <u>White Const.</u>	DATE: <u>9-24-97</u>
JOB SITE: <u>MCD-USU</u>	CONTRACT NO: <u>383</u>
	PAGE <u>1</u> OF <u>1</u>
PROJECT NAME: <u>ref. for masonry work at Sanger Hall</u>	
<input type="radio"/> DELAY <input type="radio"/> CHANGE OF SCOPE <input checked="" type="radio"/> ADDITIONAL WORK <input type="radio"/> OTHER _____	
DESCRIPTION: <u>from 10 elevation to 11 elevation</u> <u>erect 1 set of stairs between columns</u> <u>6-7 to be erected from work in</u> <u>lower area</u>	
CUSTOMER AGREES TO THE FOLLOWING COST IN ADDITION TO CONTRACT:	
<input type="radio"/> NO CHANGE <input type="radio"/> TIME AND MATERIALS _____ (LABOR, RENT, FREIGHT RATES) _____ <input checked="" type="radio"/> LUMP SUM: <u>\$350.00</u> Rental not to exceed 20 days (\$2.00 a day thereafter)	
SAFWAY STEEL PRODUCTS INC.	CONTRACTORS RECEIPT & ACCEPTANCE
BY: _____	BY: _____
DATE: _____	DATE: _____
TITLE: _____	TITLE: _____

WC00503

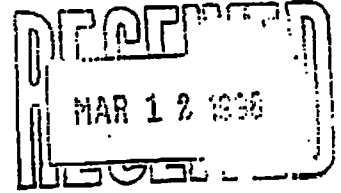
MARTY, TO BE MADE A PART OF YOUR
 CONTRACT VIA A C.O. PLEASE PROCEED
 WITH THIS RENTAL AND WORK.
 THANKS, Venchi

copy
file
WHITE

P. O. BOX 728
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.

February 25, 1998



Safway Steel Products
P. O. Box 11308
Richmond, Virginia 23230

Re: Sanger Hall Wall Repair - Phase II , MCV Campus

Revised Contract 285-4 Change Order #2

PFC #5 To furnish Phase 2 Scaffold for the Sanger Hall Wall Repair Project
for an additional SIXTEEN (16) Days.

CHANGE ORDER #2 \$3,961.35

Original Contract Amount	\$45,055.89
Change Order #1	14,731.28
Change Order #2	<u>3,961.35</u>
REVISED CONTRACT AMOUNT	\$63,748.52

All other terms and conditions of the original contract remain unchanged.

WHITE CONSTRUCTION COMPANY, INC.

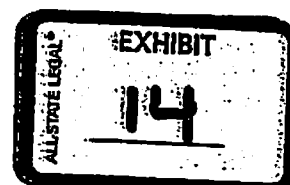
SAFWAY STEEL PRODUCTS, INC.

BY: [Signature]

TITLE: Branch Manager

DATE: 3-6-98

[Signature]
J. L. Powers
Vice President



WC00495

SUBCONTRACTOR ESTIMATE FOR CHANGE ORDER

Form SC-1
(12/08)

Project Code: 236-12708-9503

Agency: VA, COMMONWEALTH UNIVERSITY

Project: JAMER HALL UNIT ACTIVE, PHASE 2

General Contractor: WHITE CONSTRUCTION

Subcontractor: SATEWAY

Subcontractor Title: SATEWAY

Change Description: EXTEND ACTUAL PERIOD FINE TO UNFORSEEN CONDITIONS

SUBCONTRACTOR DIRECT COSTS											
Scope Description				Direct Labor				Direct Material		Direct Equipment	
Item No.	Description	Quantity	Qty Units	Direct Labor Hours Per Unit	Total Direct Labor Labor Hours	Hourly Wage Rate, Excl. Taxes & Ins.	Total Labor Cost	Material Cost Per Unit	Total Material Cost	Equipment Cost Per Unit	Total Equipment Cost
A											
1.01	FULL SCAFFOLD ALUMINUM	16	DAY							206.02	3296.32
1.02											
1.03											
1.04											
1.05											
1.06											
1.07											
1.08											
1.09	Subtotal from Estimate Quantity Details										
1.07	Subtotal (B/T) Direct Costs:										3296.32
1.08	Taxes/Insurance: FICA, FUI, SUI, and Workman's Comp. et										
1.09	Total Direct Costs										3296.32

SUB-SUBCONTRACT COSTS		
Item No.	Sub-Subcontractor Name (If billable from attached BS-1 form)	Total Cost
A		
2.01		
2.02		
2.03		
2.04		
2.05		
2.06		
2.07		
2.08		
2.09	Total Sub-Subcontract Costs	

SUMMARY		
Item No.	Description	Total Cost
3.01	Total Direct Labor Cost (Item 1.08)	
3.02	Total Direct Material Cost (Item 1.07)	
3.03	Total Equipment Cost (Item 1.07)	3296.32
3.04	Subtotal (3.01 + 3.02 + 3.03)	3296.32
3.05	Overhead and Profit (11% of Item 3.04)	516.73
3.06	Total Subcontractor Cost (3.04 + 3.05)	3761.95
3.07	Sub-Subcontractor Cost (Item 2.09)	
3.08	Total Cost Reported to GC (3.06 + 3.07)	3761.95

Submitted By:

Name: M. C. MARRIN CARLSON

Signature: [Signature]

Title: BRANCH MANAGER

Date: 12/19/17

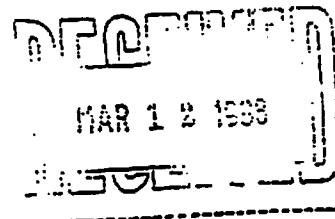
cc
Kenny
Siddell

WHITE

P. O. BOX 728
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.

February 25, 1998



Safway Steel Products
P. O. Box 11308
Richmond, Virginia 23230

Re: Sanger Hall Wall Repair - Phase II , MCV Campus

Revised Contract 285-4 Change Order #3

PFC #6 To furnish FORTY-THREE (43) days of intermediate/half-deck scaffold rental covering bays 5 thru 9, to furnish an additional FORTY-THREE (43) days of Phase 2 scaffold rental, and to provide labor for FOUR (4) each full deck moves including half-decks at the Penthouse, Twelfth, Eleventh, and Tenth levels, and to provide labor for EIGHT (8) half-deck moves from columns 5 thru 9, on levels 9, 8, 7, 6, 5, 4, 3, and 2.
This change order includes all cost, labor and rental complete thru March 31, 1998

CHANGE ORDER #3 \$19,948.07



Original Contract Amount	\$45,055.89
Change Order #1	14,731.28
Change Order #2	3,961.35
Change Order #3	<u>19,948.07</u>
REVISED CONTRACT AMOUNT	\$83,696.59

All other terms and conditions of the original contract remain unchanged.

WHITE CONSTRUCTION COMPANY, INC.

SAFWAY STEEL PRODUCTS, INC.

BY: _____

TITLE: _____

DATE: _____

J. A. Powers
Vice President

BRANCH MANAGER

WC00494

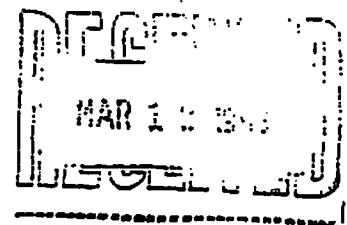
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WHITE

P. O. BOX 728
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.

February 25, 1998



Safway Steel Products
P. O. Box 11308
Richmond, Virginia 23230

Re: Sanger Hall Wall Repair - Phase II , MCV Campus

Revised Contract 285-4 Change Order #4

To furnish Intermediate/Half-Deck Scaffolding for column lines 10 thru 17. This is to include rental for THIRTY-SEVEN (37) days at \$39.96 per day including tax, and FIVE (5) Half-Deck erections (moves) at \$750.00, encompassing levels 7, 6, 5, 4, and 3 a one-time Freight charge of \$110.00

This change order includes all cost, labor and rental complete thru March 31, 1998.

\$1,478.52	Rental
3,750.00	Erection Fees
<u>110.00</u>	Freight
\$5,338.52	

CHANGE ORDER #4 \$5,338.52

Original Contract Amount	\$45,055.89
Change Order #1	14,731.28
Change Order #2	3,961.35
Change Order #3	19,948.07
Change Order #4	<u>5,338.52</u>
REVISED CONTRACT AMOUNT	\$89,035.11



All other terms and conditions of the original contract remain unchanged.

WHITE CONSTRUCTION COMPANY, INC.

SAFWAY STEEL PRODUCTS, INC.

BY: [Signature]

TITLE: Branch Manager

DATE: 3-6-98

[Signature]
J. E. Powers
Vice President

WC00492

C.O. # 4

To furnish Intermediate /
Half deck scaffolding

This is to include ^{all Base Bd} ~~and~~ and
all EXTRAS - scaffolding Rental
LABOR and ~~TAXES~~ ^{TAXES} THRU MARCH 31, 1998

\$5338.52

Total Revised CONTRACT

\$89035.11

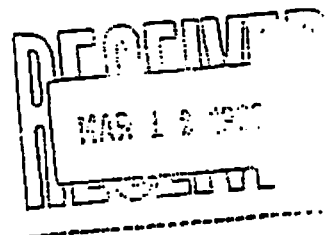
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Kemp
Subh

WHITE

P. O. BOX 728
3601 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 766-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.

March 6, 1998



Safway Steel Products
P. O. Box 11308
Richmond, Virginia 23230

Re: Sanger Hall Wall Repair - Phase II , MCV Campus

Revised Contract 285-4 Change Order #5

Rental Tax for Scaffolding thru MARCH 31, 1998

This change order includes all cost, labor and rental complete thru March 31, 1998.


CHANGE ORDER #5: LUMP SUM \$1,058.24

Original Contract Amount	\$45,055.89
Change Order #1	14,731.28
Change Order #2	3,961.35
Change Order #3	19,948.07
Change Order #4	5,338.52
Change Order #5	<u>1,058.24</u>
REVISED CONTRACT AMOUNT	\$90,093.35

All other terms and conditions of the original contract remain unchanged.

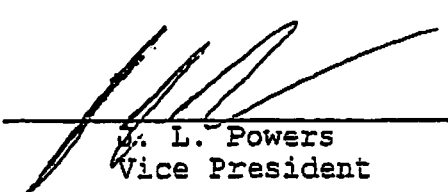
WHITE CONSTRUCTION COMPANY, INC.

SAFWAY STEEL PRODUCTS, INC.

BY: 

TITLE: Branch Manager

DATE: 3-10-98


L. Powers
Vice President



WC00489



SAFWAY STEEL PRODUCTS INC.

FACSIMILE TRANSMISSION

DATE 3-6-98

TIME

BT
DMTOTAL NUMBER OF PAGES
(Including this page)

RECEIVER'S INFORMATION

ATTENTION

COMPANY

RENDY POWERS
WHITE COIT

FAX NUMBER (

760-8842

SENDER'S INFORMATION

FROM

DEPARTMENT - SAFWAY STEEL PRODUCTS, INC. 2019 LOUNDR AVE. RICHMOND, VA 23230

PHONE NUMBER (804) 355-5523

FAX NUMBER (804) 355-7776

MESSAGE

PER AGREEMENT:UNCHARGED RENTAL TAX \$ 1,058.24MartyCO - TO SAFWAY - RENTAL
TAX for scaffolding Thru
MARCH 31This covers all cost thru 3/31

WC00490

CVMP 50



SAFWAY STEEL PRODUCTS, INC.

FACSIMILE TRANSMISSION

DATE 3-6-98 TIME am TOTAL NUMBER OF PAGES 1
(including this page)

RECEIVER'S INFORMATION

ATTENTION Ready PowersCOMPANY White Coat

FAX NUMBER ()

SENDER'S INFORMATION

FROM

DEPARTMENT - SAFWAY STEEL PRODUCTS, INC. 2013 LOOMBOE AVE. RICHMOND, VA 23230

PHONE NUMBER (804) 355-6523

FAX NUMBER (804) 355-7776

MESSAGE

Rental Tax:TOTAL RENT - \$ 51,041.61CO - \$ 30,342.42* UNTAXED RENT - \$ 19,240.67* Tax - \$ 1058.24

WC00491

**COMMONWEALTH OF VIRGINIA
FORM OF AGREEMENT**

This agreement entered into this 17th day of December 1996, by White Construction Company, hereinafter called the "Contractor" and Virginia Commonwealth University, hereinafter called the "Owner".

WITNESSETH that the Contractor and the Owner, in consideration of premises and of the mutual covenants, considerations and agreements herein contained, agree as follows:

STATEMENT OF WORK: The Contractor shall furnish all labor and materials and perform all work for The Owner (Agency Code: 236) in strict accordance with the specifications dated October 20, 1996, for Sanger Hall; Wall Repair; Phase II (Project Code: 236-12708-9503) and the drawings listed therein.

CONTRACT DOCUMENTS: This agreement shall consist of this Form of Agreement, the bid proposal submitted by the Contractor, the General Conditions and Special Conditions attached to the Owner's Invitation to Bid and the Owner's specifications and the drawings listed therein referred to above, together with all modifications thereof, all of which documents are incorporated herein.

TIME FOR COMPLETION: The work shall be commenced on a date to be specified in a written order of the Owner and shall be completed within 240 calendar days from and after the said date.

COMPENSATION TO BE PAID TO THE CONTRACTOR: The Owner will pay and the Contractor will accept in full consideration for the performance of the Contract the sum of Six Hundred Fifty Seven Thousand Two Hundred Seventeen and NO/100 ——— Dollars (\$657,217.50).

THE FOLLOWING PROVISIONS of Section 11-51 of the Code of Virginia are included in this contract:

"During the performance of this contract, the contractor agrees as follows:

"a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the 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.

"b. 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.

"c. 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.

RECEIVED & FILED
CIRCUIT COURT

MAY 25 2000

BEVILL

133

EXHIBIT

3

The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor".

ANY CONTRACTUAL CLAIMS shall be submitted in accordance with the contractual dispute procedures set forth in such Contractual Dispute Procedures as are on file and available at the contracting State agency.

IN WITNESS WHEREOF, the parties hereto on the day and year first above written have executed this agreement in 3 counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

ATTEST:

Ante E. Bader

Shedding

White Construction Company

iv

Love F. White, Jr., President
P. O. Box 728
Chester, Virginia 23831

ATTEST:

Virginia Commonwealth University

Ev:

Paul P. Jez
Assistant Vice President
Business Services and Treasurer

DATE: December 4, 1996

(SUBMIT IN DUPLICATE)

PROJECT: SANGER HALL WALL REPAIR, PHASE II
MCV CAMPUS
VIRGINIA COMMONWEALTH UNIVERSITY
RICHMOND, VIRGINIA

TO: Arnold Teten, Director
Construction & Inspection
Virginia Commonwealth University
Richmond, Virginia

In compliance with your Advertisement for Bids, the undersigned bidder proposes to furnish all labor and materials and perform all work necessary for construction of this project in accordance with the contract documents dated October 20, 1996, including Addenda noted below, as prepared by Dunbar, Milby, Williams, Pittman & Vaughan, 611 Moorefield Park Drive/Suite A, Richmond, Virginia 23236 for the consideration of the following amounts:

BASE BID:

Part A: Selective demolition of brick masonry parapets and portions of brick masonry wall panels, selective removal and replacement of damaged individual brick, replacement of metal in-wall flashings and selected metal shelf angles, construction of expansion relief joints in masonry panels and parapets, application of sealant at new and existing resilient joints; and removal of asbestos-containing building products within, or attached to, masonry walls and parapets to be removed (forty (40) cubic yards).

Lump sum price for all work described in the Contract Documents:

SIX HUNDRED SEVENTY SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$627,500⁰⁰).

Base Bids for PARTS B, C, and D shall be based on the estimated quantities indicated to be provided, complete and in accordance with the applicable portions of the plans and specifications. Payment amounts for each of these items will be based on the actual quantities authorized, provided and approved, times the unit costs indicated by the bidder. The final contract amount shall be adjusted upward or downward based on the actual payment amounts versus the bid amounts for PARTS B, C, and D.

Part B: Additional removal, repair, and reinstallation of coping stones, where authorized or directed. (price per coping stone). (Final amount shall be adjusted upward or downward based on actual quantity authorized.)

Estimated Quantity of 10 @ \$195.50 Per Stone = 1,955.00

ONE THOUSAND NINE HUNDRED FIFTY FIVE DOLLARS (\$1,955.00)

RECEIVED & FILED
CIRCUIT COURT

MAY 25 2000

BEVILL M. DEAN, CLERK

Rv.....

135

White Construction Company, Inc.

CG300-1

BD FORM

EXHIBIT

4

388

Part C: Additional removal and replacement of brick (including AS removal as specified), where authorized or directed, (price per square foot). (Final amount shall be adjusted upward or downward based on actual quantity authorized.)

Estimated Quantity of 100 S.F. @ \$ ^{\$1} 62.00 Per S.F. = \$ 6,200.00
 SIX THOUS. TWO HUND. ⁰⁰ DOLLARS (\$ 6,200.00).

Part D: Additional removal, repair, and reinstallation of vertical limestone panels, where authorized or directed, (price per panel). (Final amount shall be adjusted upward or downward based on actual quantity authorized.)

Estimated Quantity of 30 @ \$ ^{\$1} 718.75 Per Panel = \$ 21,562.50

TWENTY ONE THOUS. FIVE HUN SIXTY TWO ^{\$0} DOLLARS (\$ 21,562.50).

TOTAL BASE BID (A+B+C+D) ^{SIX THOUS. FIFTY SEVEN THOUS. THREE HUN. SEVEN ^{\$0}} DOLLARS
 (\$ 657,217.50).

Contract awarded will be based on the TOTAL BASE BID AMOUNT SHOWN.

TIME:

The undersigned understands that time is of the essence and agrees that the time for substantial completion of the entire project shall be Two Hundred Forty (240) calendar days from the date of commencement of the work as specified in the Notice to Proceed. Final completion shall be achieved within Thirty (30) consecutive calendar days after substantial completion. The bidder has relied upon the following public historical climatological records: Richmond International Airport Data Sheets for Richmond, Virginia.

ADDENDA:

We acknowledge the receipt of Addenda One (11-11-96)

Clarification #1

CERTIFICATIONS:

IMMIGRATION REFORM AND CONTROL ACT OF 1986: The undersigned certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

DISQUALIFICATION OF CONTRACTORS: By signing this bid or proposal, the undersigned certifies that this person/firm/corporation is not currently barred from bidding on contracts by any agency of the Commonwealth of Virginia, nor is this person/firm/corporation a part of any firm/corporation that is currently barred from bidding on contracts by any agency of the Commonwealth of Virginia. We have attached an explanation of any previous debarment(s) and copies of notice(s) of reinstatement(s).

White Construction Company, Inc.

If notice of acceptance of this bid is given to the undersigned, the undersigned will execute and deliver a contract in the prescribed form within fifteen (15) calendar days after the contract has been presented to him for signature. The required Payment and Performance Bonds and Certificate of Insurance shall be delivered to the Owner along with the signed contract.

Contractor Class A
 Virginia License/Registration No. 034952A
 Valid until 8-31-97 (date)
 Registration Title or Specialty General Contractor

Either the undersigned or one of the following individuals, if any, is authorized to modify this bid prior to the deadline for receipt of bids by writing the modifications and in signing his name on the face of the bid, on the envelope in which it is enclosed, on a separate document, or on a document which is faxed to the Owner or by sending the Owner a telegraphic message.

- 1) Loyd P. White, Jr.
- 2) F. Scott Moyer
- 3) Mark Fields

I certify that the firm name given below is the true and complete name of the bidder and that the bidder is legally qualified and licensed by the Commonwealth of Virginia, Department of Commerce, State Board for Contractors, to perform all work included in the scope of the Contract.

Bidder White Construction Company, Inc.

(Name of Firm)

By (signature)

(Typed Name)

Loyd P. White, Jr.

Title President

Business Address:

1305 W. Hundred Road

P.O. Box 728

Chester, VA 23831

For Partnership (Names of Partners):

For Corporation, list State of Incorporation:

Virginia

(Seal)

END BID FORM

137 90



ASBESTOS REMOVAL PROJECT DESIGN

SANGER HALL WALL REPAIR PHASE II ASBESTOS ABATEMENT Clarification #1

Location:

Sanger Hall,
1101 East Marshall St.
Richmond, Virginia.

General Description:

The abatement scope of work shall include the removal of asbestos-containing materials from the above listed structure as per the conditions set forth by the Asbestos Removal Project Design titled "Sanger Hall Wall Repair Phase II Asbestos Abatement", dated October 1, 1996. The following clarifications have been issued to provide additional information regarding acceptable work procedures in relation to this project:

1. Removal Note 7.A.1.a: Removal of all brick courses in association with shelf angle repair shall be performed under the conditions specified in the asbestos removal project design by a licensed Virginia asbestos abatement contractor.
2. Removal Note 7.B.1.a,b,c: Actual penetration of brick courses during vertical joint development must be performed by asbestos licensed personnel in accordance with the conditions set forth in the project specifications. Initial development of vertical joints may be performed by nonasbestos-licensed personnel if cutting is stopped at a minimum 1/4" prior to penetrating brick courses. Final cutting of each vertical joint would thus be completed by properly trained/protected asbestos workers.

A signed copy of this clarification must be included with contractor's bid in order to be considered in the awarding of this contract.

Representative

White Construction Company, Inc.

Contractor

WHITE

P. O. BOX 728
1305 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 766-8840
FAX (804) 766-8842

CONSTRUCTION COMPANY, INC. SUBCONTRACT

Safway Steel Products, Inc.
P. O. Box 11308
Richmond, VA 23230

Contract #285-4

RECEIVED & FILED
CIRCUIT COURT

MAY 25 2000

clerk 10:25
BEVILL M. DEAN, CLERK
By..... D.C.

DATE: January 24, 1997

PROJECT NAME: Sanger Hall Wall Repair, Phase II, MCV Campus

SUBSTANTIAL COMPLETION DATE:

No. OF CALENDAR DAYS: 240

CONTRACTOR: WHITE CONSTRUCTION CO., INC., its successors and/or assigns

ARCHITECT: Boynton Rothschild Rowland

DATE OF PLANS/SPECS: October 20, 1996

NO. OF ADDENDA: One; Clarification #1

CONTRACT DOCUMENTS: The Contract Documents include this Subcontract, the plans, drawings, specifications, approved shop drawings and submittals, and the prime contract to the extent it is not inconsistent with the terms hereof. Every obligation imposed upon Subcontractor by any of the Contract Documents shall be considered material as between Contractor and Subcontractor.

THE WORK: Subcontractor shall furnish all supervision, labor, materials, tools, equipment and services, permits, fees, and taxes required by the Contract Documents in the following division(s)/section(s) together with all work reasonably inferable therefrom: - Furnish, engineer and erect all scaffolding per contract document requirements including stair tower to roof and equipment hoist. Erect first two decks for two months. Erect remaining scaffolding to roof for an additional two months. There shall be two working deck levels available at all times and an additional non loaded deck for logistics purposes. There are to be twelve additional deck moves as requested by contractor. Rental time starts when scaffolding is complete and ready for use.

The Sub
Responsible for any site areas, grass, paving, trees and shrubs, etc. that you may damage or destroy in the course of your work.

~~Subcontractor is responsible for his own cutting, patening, excavating, backfilling, and compacting.~~ Subcontractor shall check all Contract Documents for the Work and shall verify dimensions and figures shown before laying out and proceeding with the Work, and shall coordinate with Contractor and all other trades on the project. Subcontractor shall inspect and verify all conditions which affect the installation of his work and report any issues to the Contractor before proceeding with his work. Subcontractor agrees to perform any additional work within its trade required of Contractor, with the price for such work to be determined in accordance with the terms of the prime contract less Contractor's profit and overhead. Contractor will accept no charges for extras without its prior written authorization. Subcontractor may be required to submit daily field reports per Contractor's format.

Subcontractor agrees that the Work includes all labor and materials required for a complete and operational system, and that all Work shall be performed in a good and workmanlike manner.

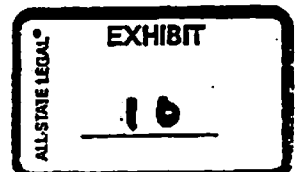
Subcontractor agrees to be responsible for removal of all trash, excess excavation, and debris from the site as needed or to participate in dumpster costs with Contractor in proportion to the amount of trash generated as assessed by the Contractor. Upon 24 hours notice of any default with respect to any of these obligations, Contractor may backcharge Subcontractor for any costs incurred by reason of such default.

SUBCONTRACT SUM: Forty-Five Thousand Fifty-Five and 89/100 Dollars (\$545,055.89)

To the extent any prices are to be based upon unit prices, the price shall be computed in accordance with those unit prices detailed in Exhibit A, and Subcontractor shall document each unit appropriately. [Add Exhibit A, if applicable]

PA
PAYMENT TERMS: Subcontractor shall submit for Contractor's approval a Schedule of Values showing labor and material breakdowns by phase and item of Work with this Subcontract. Payment applications detailing completion of the Work in accordance with the approved Schedule of Values and containing documentation required by the Contract Documents must be submitted by the 25th day of each month for payment by the 30th day of the following month subject to the other terms of this Subcontract. Subcontractor shall provide partial and/or final lien waivers for themselves and for their subcontractors and suppliers upon request.

BY CONTRACTORS LIEN WAIVER FORM.



All materials shall be stored on site ~~and~~ adequately protected from damage and/or theft. Original supplier invoices for stored materials must be submitted with payment applications in order to receive payment for stored materials, if such payments are allowed under the contract. No payments will be made for materials stored off site.

This agreement must be executed by both parties prior to any payments being made under this agreement. No payments will be made under this agreement without certificate of insurance required under paragraph "Insurance" being supplied to the Contractor.

Certificates or applications for payment are not binding upon Contractor and shall not be deemed an acceptance of Subcontractor's Work. Payment from Owner to Contractor for Work performed by Subcontractor is a condition precedent to Contractor's duty to make any payment to Subcontractor for such Work. ~~Retainage in the amount of 5% of the amount paid by Owner for Work performed by Subcontractor shall be withheld until completion and acceptance of the project by Owner and Architect.~~

Subject to the above precedent, final payment shall be due thirty days after completion of the Work, acceptance by the Owner and any governmental authorities having jurisdiction, compliance with all Subcontract obligations, and receipt of payment from Owner.

Subcontractor agrees to provide any and all documentation required by Owner, governmental authorities, or Contractor before payment is due to Subcontractor.

DISPUTES: As a condition precedent to the right to file suit for breach of this Subcontract, the parties hereto agree to submit any claims arising under or related to this Subcontract to mediation in good faith with The McGammon Mediation Group or some other mutually agreed mediator. If the parties are unable to obtain a settlement through mediation, the parties agree that all suits at law or equity will be filed solely in the Circuit Court of the City of Richmond, Virginia, or such other venue as the parties may agree upon, and they hereby waive their right to demand trial by jury. ~~In the event that Contractor substantially prevails in such mediation and/or litigation, Subcontractor shall pay to Contractor its reasonable attorney's fees incurred.~~

** SEE ADDENDUM I*
INSURANCE: Before commencement of the Work, Subcontractor shall procure automobile liability, workers compensation and employer's liability, broad form comprehensive general liability, including contractor's protective liability, broad form contractual liability insurance, and completed operations coverage and/or such other insurance as may be necessary to protect against all liability that may be chargeable to Contractor, Owner, Owner's representatives, or Subcontractor on account of accidents or injuries caused by acts or omissions of Subcontractor and its independent contractors engaged in the Work, and in amounts not less than that required of Contractor in the prime contract. Prior to commencing the Work, Subcontractor shall deliver certificates of insurance to Contractor which shall provide for 30 days' advance written notice by certified mail of cancellation, termination, or alteration of any insurance policy. The provisions in this paragraph in no way limit or relieve Subcontractor's obligation to indemnify Contractor as provided elsewhere within this Agreement. Contractor reserves the right to procure insurance on behalf of Subcontractor and to backcharge Subcontractor for its costs incurred including overhead/
ONLY IF SUBCONTRACTOR'S CURRENT POLICY REVENUES EXPIRED.

SAFETY: Subcontractor shall comply with OSHA and all statutory and/or contractual safety requirements applying to its Work and as initiated by Contractor. Subcontractor shall submit Material Safety Data Sheets for all products used.

SUBMITTALS: Subcontractor shall submit 7 copies of complete submittals together with the number of sets required for fabrication/installation by Subcontractor within 1 week of the date of this Subcontract. Subcontractor shall submit a list of all sub-subcontractors and suppliers it intends to use on this project prior to beginning the Work.

PROFESSIONAL CONDUCT: Subcontractor agrees to instruct its personnel to conduct themselves in a professional manner, to refrain from profanities and off-color comments, and to be sensitive to the Owner, its personnel and the public. Subcontractor shall maintain a drug- and alcohol-free project. Any violation of this provision will be cause for removal of the offending employee from the project solely at Subcontractor's cost, and may be basis for termination of this Subcontract.

COMPLIANCE WITH LAWS: Subcontractor agrees to abide by all laws, regulations, and ordinances in executing the Work, including without limitation OSHA and all safety and environmental laws. Subcontractor agrees that a failure to comply with any such requirements constitutes a material breach of this Subcontract. Subcontractor further agrees to indemnify Contractor and hold Contractor harmless for all civil or criminal penalties, corrective measures, cleanup costs, response costs or costs of remediation arising from or related to any actual or alleged violation of any law, rule, regulation, or ordinance, including claims for contribution and/or indemnity. Subcontractor agrees to reimburse Contractor for reasonable attorney's fees incurred with respect to Subcontractor's actual or alleged violation of any provision of this section.

TERMINATION: Contractor reserves the right to terminate this Subcontract should Subcontractor fail to correct any defaults under this Subcontract within three days after notice of such default. Contractor reserves the right to terminate Subcontractor for its convenience upon three days notice. Any improper termination for default made in good faith, shall be deemed to be a termination for convenience. In no event shall Subcontractor be entitled to lost profits or overhead for work not actually performed.

NON-WAIVER: Any failure of Contractor to insist upon any term of this Subcontract shall not be deemed a waiver of any of Contractor's rights pursuant to this Subcontract.

INDEMNITY: Subcontractor agrees to indemnify Contractor against any claims, losses, costs, or expenses, including reasonable attorney's fees, arising from the defense of any mechanic's lien against Owner's property, the injury to or death of any person, damage to any property, or any violation of patent, trademark, or copyright laws arising from or related to the Work.

CAUSED BY SUBCONTRACTOR

SCHEDULE: TIME IS OF THE ESSENCE OF THIS AGREEMENT. Subcontractor shall proceed within 48 hours of receiving notice to proceed and shall prosecute the Work diligently to completion. Subcontractor shall not be entitled to additional compensation for overtime or other costs associated with completing the Work in accordance with the schedule as it may be amended from time to time. Failure to complete Work within the time indicated on the construction schedule may be cause for Contractor to backcharge Subcontractor for liquidated or other damages which may be assessed due to such delays. For any delay or adverse impact caused by Contractor and/or by other subcontractors, Subcontractor shall be entitled only to an appropriate extension of time for completion. In no event shall Subcontractor be entitled to recover "delay" or "impact" damages from Contractor, except to the extent that Contractor recovers such damages from Owner for the specific delay or impact suffered by Subcontractor.

FLOW-DOWN RELATIONSHIP: Subcontractor is bound to Contractor in the same way that Contractor is bound to Owner, and Subcontractor shall bear all obligations and liabilities with respect to Contractor as Contractor has with respect to Owner. In the event of any inconsistency or conflict between the prime contract and this Subcontract, this Subcontract shall govern.

INSPECTION: Subcontractor agrees that Contractor or Owner may inspect or test material and workmanship required by this Agreement at any time. Subcontractor shall, without charge, replace any material or correct any workmanship failing to conform to the Contract Documents. Contractor may correct or have others correct nonconforming Work and backcharge Subcontractor for its cost incurred.

ASSIGNMENT: Neither this Agreement nor any invoices or obligations for payment made pursuant to this agreement may be assigned, in whole or in part, by Subcontractor without the written consent of Contractor.

WARRANTY: Subcontractor warrants its Work to the same extent that Contractor's Work is warranted under the prime contract.

White Construction Co., Inc.


Lloyd P. White, Jr.
President

Safway Steel Products, Inc.

By: 

Title: Gerald Manning

Dated: 4/1/87

The following individuals guarantee Subcontractor's performance of this Subcontract.

ADDENDUM I

March 24, 1997

White Construction Company, Inc.
P.O. Box 728
Chester, Virginia 23831

RE: Subcontract No. 285-4 Sanger Hall Wall Repair, Scaffolding Addendum I.


The following change in section named "DISPUTES" and so noted in the subcontract, shall have the following added to replace the stricken sentence pertaining to Attorney's fees.

"The party prevailing on a claim in such mediation and/or litigation, shall recover from the other party its reasonable Attorney's fees incurred with respect to that claim."


This Addendum I shall be incorporated into the above noted Subcontract and will supersede any prior wording to the contrary. This Addendum I and the Subcontract will be the total contract between the two parties in its entirety.

Safway Steel Products, Inc.

White Construction Co. Inc.

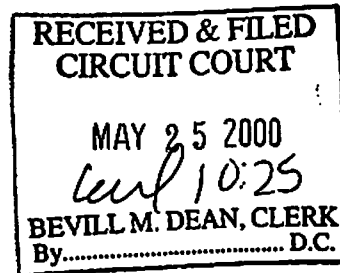


Martin R. Carlson
Branch Manager



Title:
Dated: 3/24/97

COMMONWEALTH OF VIRGINIA



GENERAL CONDITIONS OF THE CONTRACT FOR CAPITAL OUTLAY PROJECTS

INDEX

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23.	DRAWINGS AND SPECIFICATIONS	48.	ASBESTOS
24.	SUBMITTALS	49.	TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT
25.	FEES, SERVICES AND FACILITIES	50.	PROHIBITION OF ALCOHOL AND OTHER DRUGS AT JOBSITE



VCU 000105

Rev: 12/01/91

1. DEFINITIONS

Whenever used in these 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:

Agency: The term, Agency, as used in the Contract Documents, unless otherwise indicated, shall mean the Owner.

Architect, Engineer, Architect/Engineer or A/E: The term used to designate the Architect and/or the Engineer who contracts with the Owner to provide the Architectural and Engineering services for the Project. The A/E is a separate contractor and not an agent of the Owner. The term includes any associates or consultants employed by the firm to assist in providing the A/E services. Referred to herein as the Architect/Engineer and abbreviated as A/E.

Beneficial Occupancy: The condition prior to final acceptance of the project at which time the project, or portion thereof, is sufficiently complete and systems operational to allow the Owner to occupy and utilize the space for its intended use. Guarantees and warranties applicable to that portion of the work begin on the date accepted for beneficial occupancy.

Change Order: A document issued by the A/E on or after the effective date of the Agreement which is agreed to by the Contractor and approved by the Owner, and which authorizes an addition, deletion or revision in the Work, including any adjustment in the Contract Price and/or the Contract Time.

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

Construction: As used in these documents shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the Commonwealth and any draining, dredging, excavation, grading or similar work upon real property.

Contractor: The person, firm or corporation with whom the Owner has entered into a contractual agreement and includes the plural number and the feminine gender when such are named in the Agreement as the Contractor.

Defective: An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspections, standard, test or approval referred to in the Contract Documents, or has been damaged prior to A/E's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion).

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

Final Acceptance: The Agency's acceptance of the Project from the Contractor upon confirmation from the Architect/Engineer and the Contractor that the project is totally complete in accordance with the contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the contract amount including any change orders or adjustment thereto.

Field Order: A written order issued by the A/E which clarifies the requirements of the Contract by giving a more complete expression of the drawings or specifications without any change in the design, the Contract price or the Contract time.

VCU 000106

Rev: 12/01/91

Notice: All written notices, demands, instructions, claims, approvals and disapprovals required to obtain compliance with the Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm or corporation constituting the party to the Contract, or to his, their or its authorized agent, representative or officer, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mailbox.

Notice to Proceed: A written notice given by the Owner to the Contractor (with a copy to A/E) 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.

Owner: The public body, i.e., an agency, institution, or department, with whom the Contractor has entered into a contractual agreement and for whom the Work or services is to be provided.

Project Inspector: One or more individuals employed by the Owner to inspect the Work and/or to act as clerk of the works to the extent required by the Owner. The Owner 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.

Submittals: All drawings, diagrams, illustrations, schedules and other data required by the Contract Documents 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 or equipment for some portion of the Work.

Subcontractor: An individual, partnership or corporation having a direct contract with Contractor or with any other Subcontractor for the performance of the Work. It includes one who provides on-site labor but does not include one who only furnishes or supplies materials for the project.

Substantial Completion: The Work which is sufficiently complete, in accordance with the Contract Documents, so that the project can be utilized by the Owner for the purposes for which it is intended.

Supplemental General Conditions: The part of the Contract Documents which amends or supplements the General Conditions.

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

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

Work: The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor, and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

VCU 000107

Rev: 12/01/91

2. CONTRACT DOCUMENTS

- (a) The Contract entered into by the parties shall consist of the Form of Agreement; the bid submitted by the Contractor; these General Conditions; the Supplemental General Conditions, if any; the Special Conditions, if any; the drawings; the specifications including everything listed in the Table of Contents though not specifically listed here; and all modifications and addenda to the foregoing documents, all of which shall be referred to collectively as the Contract Documents.
- (b) 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) The Form of Agreement shall be signed by the Owner and the Contractor in as many original counterparts as may be mutually agreed upon.
- (d) Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract Documents shall have the intended effect. In the event of conflicts among the Contract Documents, the Contract Documents shall take precedence in the following order: the Form of Agreement; the Supplemental General Conditions; the General Conditions; the Special Conditions; the specifications with attachments and the drawings.
- (e) This Contract is an entire and integrated contract and is not severable.

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) This Contract and all other contracts and subcontracts are subject to the provisions of Articles 4 and 5, Chapter 4, Title 40.1, Code of Virginia, relating to labor unions and the "right to work." The Contractor and its Subcontractors, whether residents or nonresidents of the Commonwealth, who perform any work related to the project shall comply with all of the said provisions.
- (c) IMMIGRATION REFORM AND CONTROL ACT OF 1986: By signing this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
- (d) The provisions of all rules and regulations governing safety as adopted by the Safety Code Commission of the Commonwealth of Virginia and as issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this Contract. Inspectors from the Department of Labor and Industry shall be granted access to the Work for inspection without first obtaining a search warrant from the court.
- (e) Building Permit: Because this is a project of the Commonwealth of Virginia, codes or ordinances of local political subdivisions do not apply. Building permits where required will be obtained and paid for by the Owner. This does not include any local license fees, business fees or similar assessments which may be imposed by the appropriate political subdivision.
- (f) The Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements in subsections (c), (d) and (e) of Section 37 of these General Conditions with respect to each lower-tier Subcontractor and material supplier.

- (g) The Contractor, if not licensed as an asbestos abatement contractor or an RFS contractor in accordance with Section 54.1-514, Code of Virginia, shall have all asbestos related Work performed by subcontractors who are duly licensed as asbestos contractors or RFS contractors as appropriate for the Work required.

4. NONDISCRIMINATION

The following requirements of Section 11.51 of the Code of Virginia shall be applicable:

- "1. During the performance of this Contract, the Contractor agrees as follows:
 - "(a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the 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.
 - "(b) 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.
 - "(c) 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.
- "2. The Contractor will include the provisions of the foregoing paragraphs (a), (b) and (c) in every subcontract or purchase order of over ten thousand dollars (\$10,000), so that provisions will be binding upon each Subcontractor or vendor."

5. CONDITIONS AT SITE

- (a) The Contractor shall have visited the site prior to bidding and is 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, as a result of failure to have done so, will not be considered by the Owner.
- (b) If, in the performance of the Contract, hidden physical conditions of a building being modified are exposed revealing unusual or materially different conditions than those ordinarily encountered or inherent in work of this nature, or if subsurface or latent conditions at the site are found which are materially different from those frequently present in the locality, from those indicated in the Contract Documents, or from those inherent in work of the character required by the Contract, the Contractor must report such conditions to the Owner and to the Architect/Engineer before the conditions are disturbed. Upon such notice, or upon his own observation of such conditions, the Architect/Engineer shall promptly make such changes in the Contract Documents as he finds necessary to conform to the different conditions. Any change in the cost of the Work or the time needed for completion must be requested pursuant to Sections 38, 39 and/or 43 of these General Conditions.
- (c) If the Contractor, during the course of the project, observes the existence of any material which it knows to be hazardous to human health, the Contractor shall promptly notify the Owner. The Owner 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 Owner.

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6. TIME FOR COMPLETION

- (a) "Time for Completion" means the number of consecutive days following the receipt of a Notice to Proceed which the Contractor has in which to substantially complete everything required of it by the Contract. The time for completion shall be designated by the Owner on the bid form or other prebid documents.
- (b) The time for completion shall be entered in the Form of Agreement and shall become a binding part of the Contract upon which the Owner may rely in planning the use of the facilities to be constructed and for all other purposes. If the Contractor shall fail to complete the Work within the time for completion set forth in the Contract, he shall be subject to payment of actual damages incurred by the Owner or liquidated damages, if provided for in the Contract.
- (c) The Contractor, in 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 patterns which might be anticipated based on weather data for the past ten (10) years, (i.e., conditions which are not extremely unusual). Normal weather conditions shall be determined from the public historical records available, including the U.S. Department of Commerce, Local Climatological Data Sheets, Oceanic and Atmospheric Administration/Environmental Data and Information Service, National Climatic Center and National Weather Service. The data sheets to be used shall be for the locality or localities closest to the site of the work. No additional compensation will be paid to the Contractor because of adverse weather conditions; however, an extension of time for abnormal weather will be considered by the Owner under the following conditions:
 - (1) The claim for additional time shall be further substantiated by weather data collected during the period of delay at the construction site. Said data must demonstrate that an actual departure from normal weather occurred at the work site during the dates in question.
 - (2) The extension claimed must be supported by a delay in completion of the Work shown on the Critical Path Schedule or the bar graph schedule required for the project. Extensions will be granted only for delays in completion of the project, not for that portion of any delay which consumes only "float" time.
 - (3) A request for extension of time based on abnormal weather must be made in writing within five (5) calendar days of the completion of the calendar month during which abnormal weather is claimed at the site.
 - (4) All of the evidence and data supporting the claim (including both historical data and the recordings at the construction site during the time of delay) must be furnished to the Owner before any consideration will be given to the claim. That supporting data shall be submitted by the end of the calendar month following the month for which the claim is made.

7. STANDARD FORMS

The Form of Agreement (CO-9), the Affidavit of Payments of Claims (CO-13), the Standard Performance Bond (CO-10) and the Standard Labor and Material Payment Bond (CO-10.1) issued by the Commonwealth of Virginia in its Capital Outlay Manual are incorporated in these General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein. They must be used by the Contractor for their respective purposes.

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8. CONTRACT SECURITY

- (a) Except for contracts of less than one hundred thousand dollars (\$100,000), the Contractor shall deliver to the Owner 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 authorized 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 Owner for the entire amount of the bond. Sureties shall be selected by the Contractor, subject to approval by the Owner. No payment on the Contract shall be due and payable to the Contractor until the bonds have been approved by the Owner and the Office of the Attorney General of Virginia. In order to facilitate review of the bonds by the Office of the Attorney General, prior to execution of the bonds by the surety, the power of attorney from the surety company to its agent who executes the bond shall be recorded in the Office of the Clerk of Court for the City of Richmond, Virginia, at the John Marshall Court Building, 800 East Marshall Street, except when the Owner is one of the following, in which case the power of attorney must be recorded with the Clerk of Court in the place shown:

<u>OWNER</u>	<u>PLACE OF RECORDATION</u>
University of Virginia	City of Charlottesville
Old Dominion University	City of Norfolk
Virginia Polytechnic Institute and State University	County of Montgomery

- (b) For the purposes of all Standard Labor and Material Payment Bonds entered into, the term "subcontractors" as used in §11-58 A.2. of the Code of Virginia is interpreted to mean any contractors who participated in the prosecution of the Work undertaken by the Contractor (referred to in §11-5 A.2. of the Code of Virginia as the "prime contractor"), whether such contractor had a direct contract with the Contractor (prime contractor) or whether there were one or more other intervening subcontractors contractually positioned between it and the Contractor (prime contractor).
- (c) See Section 11-61 of the Code of Virginia, for alternative forms of security for payment and/or performance bonds.

9. SUBCONTRACTS

- (a) The Contractor shall as soon as practicable after the signing of the Contract, notify the Owner and Architect/Engineer in writing of the names of Subcontractors proposed for the principal parts of the Work and of such others as the Architect/Engineer may direct. The Contractor shall not employ any Subcontractor that the Owner may, within a reasonable time, object to as unsuitable. Neither the Owner nor the Architect/Engineer shall direct the Contractor to contract with any particular Subcontractor unless provided in the specifications or Bid form.
- (b) The Owner shall, on request, furnish to any Subcontractor, if practicable, the amounts of payments made to the Contractor, the Schedule of Values 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.

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- (c) The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his Subcontractors, Suppliers, and invitees upon the site of the project and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

10. SEPARATE CONTRACTS

- (a) The Owner reserves the right to let other contracts in connection with the project, the work under which may proceed simultaneously with the execution of this Contract. The 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. If the Owner has listed other separate contracts in the Invitation to Bid 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 to Bid, the Contractor shall integrate the schedule of those separate contracts into his scheduling. The Contractor shall make every reasonable effort to assist the Owner in maintaining the schedule for all separate contracts. If the Work performed by the separate contractor is defective or performed so as to prevent this Contractor from carrying out his Work according to the drawings and specifications of this Contract, this Contractor shall immediately notify the Owner and the Architect/Engineer upon discovering such conditions.
- (b) If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up as required by Sections 31 (c) and 31 (d) of these General Conditions, the Owner may clean up and charge the cost thereof to the respective Contractors in proportion to their responsibility. If a Contractor disputes the Owner's apportionment of clean-up costs, it shall be that contractor's burden to demonstrate and prove the correct apportionment.

11. 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 Owner; 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 Owner shall not relieve or decrease the liability of the Contractor hereunder.
- (b) During the performance of the Work under this Contract, the Contractor shall take out and maintain Workers' Compensation and Employers' Liability Insurance for all of his employees engaged in the Work in an amount no less than the minimum allowed by the law of Virginia, and, in case any such Work is sublet, the Contractor shall require the Subcontractor similarly to provide Workers' Compensation and Employers' Liability Insurance for all of the latter's employees to be engaged in such work.
- (c) During the performance of the Work under this Contract, the Contractor shall maintain commercial general liability insurance and 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 such insurance for each type shall be not less than \$500,000 per person and \$1,000,000 per occurrence for bodily injury, \$1,000,000 per each occurrence for property damage, and \$1,000,000 on completed operations.

- (d) The Asbestos Contractor or Subcontractor, as the case may be, shall provide occurrence basis liability insurance with asbestos coverages in an amount not less than \$1,000,000 and shall name the following as additional insureds: The Commonwealth of Virginia, its officers, its employees and its agents; the Architect/Engineer (if not the Asbestos Project Designer); and the Contractor (where the asbestos work is being performed by the Asbestos Subcontractor).

12. INSURANCE FOR OWNER AND CONTRACTOR

- (a) The Contractor, at his cost, shall effect and maintain in the names of the Owner and the Contractor "all-risk" builders risk insurance (or fire, extended coverage, vandalism and malicious mischief insurance, if approved by the Owner and the Director, Division of Engineering and Buildings) upon the entire structure or structures on which the Work of this Contract is to be done and upon all material in or adjacent thereto which is intended for use thereon, to one hundred percent (100%) of the insurable value thereof. Such insurance may include a deductible provision if the Owner so provides in the Supplemental General Conditions, in which case the Contractor will be liable for such deductions, whenever a claim arises. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee, for whom it may concern. The Owner shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with the Owner no later than thirty (30) days following the award of the Contract. In the event of cancellation of this insurance, not less than thirty (30) days prior written notice must be sent to the Owner. A copy of the policy of insurance shall be given to the Owner upon demand.
- (b) The value of the builder's risk insurance shall exclude the costs of excavations, backfills, foundations, underground utilities and sitework. Certain projects such as renovations and interior modifications may be excluded from the requirements of this section, upon recommendation of the Owner and approval of the Director of the Division of Engineering and Buildings, and so provided in the Supplemental General Conditions.
- (c) Any insurance provided through the Department of General Services, Division of Risk Management for construction, additions or renovations will not extend to Contractor's nor Subcontractors' buildings, equipment, materials, tools or supplies unless these items are to become property of the Owner upon completion of the Project.

13. TAXES

The Contractor shall, without additional expense to the Owner, 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. If the State Building Official elects to have the local building official inspect the Work as provided by Section 36-98.1 of the Code of Virginia, the Owner will pay the resulting fees to the local building official.

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 and save the Owner, its officers, agents and employees, harmless from any loss or liability for or on account of the infringement of any patent rights in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the specifications or drawings 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 drawings 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 Owner and the Architect/Engineer. The Owner 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 Owner and the Architect/Engineer, he shall be responsible for any loss due to the infringement.

15. ARCHITECT/ENGINEER'S STATUS

- (a) The Architect/Engineer shall use his powers under the Contract to endeavor to secure its faithful performance by Owner and Contractor. He shall determine the progress and quality of the Work, subject to the right of the Owner to make an overriding decision to the contrary. He shall interpret the requirements of the drawings and specifications and issue Field Orders to the Contractor as may be required. He shall recommend to the Owner suspension of the Work (in whole or in part) whenever such suspension may be necessary to ensure the proper execution of the Contract. He shall have authority to reject, in writing, Work which does not conform to the requirements of the drawings and specifications. The Architect/Engineer shall have no authority to approve or order changes in the Work which alter the design concept or which call for an extension of time or a change in the contract price. Upon request, the Architect/Engineer shall confirm, in writing within ten (10) days, any oral order or determination made by him.
- (b) Although the Owner is bound by the terms of the Contract with the Contractor, including the drawings and specifications, the Owner shall have the right, but not the duty, to countermand any decision of the Architect/Engineer and to follow or reject the advice of the Architect/Engineer, including but not limited to acceptance of the Work, as it deems best. In those instances where the Architect/Engineer has been given authority to inspect, recommend, make a decision, etc., the Architect/Engineer shall promptly do so, but in the case of disagreement between them, the decision of the Owner shall be final. The Contractor shall not be bound by any determination, interpretation or decision of the Architect/Engineer, if it is later determined that the same is not in accord with the Contract Documents. The party taking issue with the determination, interpretation or decision of the Architect/Engineer shall give the other party written notice of such fact within ten (10) days after the determination, interpretation or decision is communicated by the Architect/Engineer. In the actual performance of the Work, however, the Contractor shall, in the first instance, proceed in accordance with instructions given by the Architect/Engineer unless the Owner and the Contractor mutually agree that the Contractor shall proceed otherwise.
- (c) All orders from the Owner to the Contractor shall either be transmitted through the Architect/Engineer or the Architect/Engineer shall be informed of the order by the Owner.
- (d) In case of the termination of the employment of the Architect/Engineer, the Owner shall appoint a capable and reputable replacement Architect/Engineer. The status of the Architect/Engineer so appointed under this Contract shall be the same as that of the former Architect/Engineer.
- (e) Architect/Engineer shall provide to the Owner and the Contractor after each visit to the site, a written report indicating the date, time of day, weather conditions and the names of the persons representing the Architect/Engineer who participated in the visit. The report shall advise the Owner of any problems that were noted and shall compare the Architect/Engineer's observations of the actual progress of the Work with that reported by the Contractor. On the basis of his on-site observations as Architect/Engineer, he shall make every reasonable effort to guard the Owner against defects and deficiencies in the Work of the Contractor. The Architect/Engineer shall not be responsible for construction means, methods, techniques, sequences or procedures (other than those expressly specified in Contract Documents), or for safety precautions and programs in connection with the Work, and he shall not be responsible for the Contractor's failure to carry out the Contractor's own responsibilities. He shall have the authority to inspect the Work, to note and report defective Work and deviations from the Contract Documents to the Owner, to reject same, and to recommend to the Owner the suspension of the Work when necessary to prevent defective Work from proceeding or being covered. He shall be responsible to note and report to the Owner

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defective Work and deviations from the Contract Documents, for rejecting the same, and for recommending to the Owner suspension of the Work when necessary to prevent defective Work from proceeding or being covered.

16. INSPECTION

- (a) All material and workmanship shall be subject to inspection, examination and test by the Owner and its Architect/Engineer at any and all times during manufacture and/or construction. The Architect/Engineer shall have authority to reject defective material and workmanship and require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper material without charge therefor, and the Contractor shall promptly segregate and remove the rejected material from the premises. If the Contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, the Owner may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost to the Contractor, or may terminate the right of the Contractor to proceed as provided in Section 41 of these General Conditions, the Contractor and surety being liable for any damage to the same extent as provided in Section 41 for termination thereunder.
- (b) Jobsite inspections, tests conducted on site or tests of materials gathered on site, which the Contract requires to be performed by independent testing entities, shall be contracted and paid for by the Owner. Examples of such tests are the testing of cast in-place concrete, foundation materials, soil compaction, pile installations, caisson bearings and steel framing connections. Although conducted by independent testing entities, the Owner will not contract and pay for tests or certifications of materials, manufactured products or assemblies which the Contract, codes, standards, etc., require to be tested and/or certified for compliance with industry standards such as Underwriters Laboratories, Factory Mutual or ASTM. If there are any fees to be paid for such tests and certifications, they will be paid by the Contractor. The Contractor shall also pay for all inspections, tests, and certifications which the Contract specifically requires him to perform or pay, together with any inspections and tests which he chooses to perform for his own quality control purposes. The Contractor shall promptly furnish, without additional charge, all reasonable facilities, labor and materials necessary and convenient for making such tests. Except as provided in (c) below, whenever such examination and testing finds defective materials, equipment or workmanship, the Contractor shall reimburse the Owner for the cost of reexamination and retesting.
- (c) Should it be considered necessary or advisable by Owner or the Architect/Engineer at any time before final acceptance of the entire Work to make an examination of any part of the Work already completed, by removing or tearing out portions of the Work, the Contractor shall on request promptly furnish all necessary facilities, labor and material to expose the Work to be tested to the extent required. If such Work is found to be defective in any respect, due to the fault of the Contractor or his Subcontractors, he shall defray all the expenses of uncovering the Work, of examination and testing, and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of the Contractor's labor and material necessarily involved in uncovering the Work, the cost of examination and testing and Contractor's cost of material and labor necessary for replacement shall be paid to the Contractor and he shall, in addition, if completion of the Work has been delayed thereby, be granted a suitable extension of time.
- (d) The Project Inspector will recommend to the Architect/Engineer and the Owner that the Work be suspended when in his judgment the drawings and specifications are not being followed. Any such suspension shall be continued only until the matter in question is resolved to the satisfaction of the Owner. The cost of any such Work stoppage shall be borne by the Contractor unless it is later determined that no fault existed in the Contractor's Work.
- (e) The Project Inspector has no authority to and shall not:
 - (1) Authorize deviations from the Contract Documents;

- (2) Enter into the area of responsibility of the Contractor's superintendent;
- (3) Issue directions relative to any aspect of construction means, methods, techniques, sequences or procedures, or in regard to safety precautions and programs in connection with the Work;
- (4) Authorize or suggest that the Owner occupy the project, in whole or in part;
- (5) Issue a certificate for payment.

17. SUPERINTENDENCE BY CONTRACTOR

- (a) The Contractor shall have a competent foreman or superintendent, satisfactory to the Architect/Engineer and the Owner, on the job site at all times during the progress of the Work. 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 Owner, in writing, of any proposed change in superintendent including the reason therefore 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 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 Owner or the Owner's separate contractors and their subcontractors.
- (c) The Owner may, in writing, require the Contractor to remove from the Work any employee the Owner deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

18. CONSTRUCTION SUPERVISION, METHODS AND PROCEDURES

- (a) The Contractor shall be solely responsible to supervise and direct 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, but 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 Owner that the finished Work complies with the Contract Documents. 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 Architect or Engineer, the Project Inspector, the Owner, the Owner's 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 responsibility for health and safety programs and precautions.
- (b) If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to Architect/Engineer, subject to the Owner's right to disapprove. The Contractor must submit its written request for the substitution to the Architect/Engineer with sufficient information to allow the Architect/Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract.

- (c) The Contractor shall be fully responsible to the Owner for all acts and omissions of all succeeding tiers of Subcontractors and Suppliers performing or furnishing any of the Work just as the Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between Owner or Architect/Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of Owner or Architect/Engineer 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 divisions and sections of Specifications and the identification of any Drawings shall not control 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) The Contractor is responsible for the sequencing, scheduling and coordinating of the Work, for monitoring the progress of the Work, and for taking appropriate action to keep the Work on schedule. Within two (2) weeks after signing the Contract, unless otherwise extended by the Owner at the time of the signing of the Contract, the Contractor shall prepare and submit to the Owner through the Architect/Engineer a preliminary schedule for accomplishing the Work based upon the completion time stated in the Contract. A fully complete progress schedule for accomplishing the work must be submitted in like manner no later than sixty (60) days after signing the Contract. No progress payments will be payable to the Contractor until after it has submitted a preliminary schedule which is acceptable to the Owner. Neither the second progress payment nor any subsequent payment shall be payable to the Contractor until it has submitted a fully complete progress schedule.

Failure to provide a satisfactory preliminary or final schedule for accomplishing the work within the time provided above shall be a breach of contract for which the Owner may terminate the Contract in the manner provided in Section 41 of these General Conditions. Both the preliminary schedule and the final schedule for accomplishing the Work shall be of the type set forth in subparagraph I or II below, as appropriate:

- I. For Contracts with a price of \$1,500,000 or less, a bar graph schedule will satisfy the above requirement. The schedule shall indicate the estimated starting and completion dates for each major element of the work. The actual progress of those elements of the work will be reported monthly to the Owner through the Architect/Engineer at the time of submission of the request for payment. If any elements of the Work are behind schedule, regardless of whether they may prevent the Work from being completed on time, the Contractor must indicate in writing what measures he is taking and plans to take to bring each such element back on schedule and to insure that the time of completion is not exceeded.
- II. For Contracts with a price over \$1,500,000, a Critical Path Method (CPM) schedule shall be utilized to control the planning and scheduling of project. The CPM schedule shall be the responsibility of the Contractor and shall be paid for by the Contractor.

CPM Schedule: The working plan and schedule will be developed in the form of a CPM network diagram using the Contractor's logic and time estimates. The network shall be in the time-scaled precedence format. The network diagram shall be drawn or pieced with activities grouped or zoned by work area or subcontract as opposed to a random (or scattered) format.

The network diagram shall be time scaled on a weekly basis and shall be drawn at a level of detail and logic which will schedule all salient features of the Work, including the placing of orders for materials, submission of shop drawings and other submittals for approval, approval of shop drawings by Architect/Engineer, delivery of material, and all work activities to be performed by the Contractor. The duration of activities to be performed by the Architect/Engineer shall be in accordance with the relevant provisions, if any, of the Architect's/Engineer's contract with the Owner or shall be determined by agreement between the Architect/Engineer and General Contractor. If they are unable to agree, the Owner shall determine the appropriate duration for such Architect/Engineer activities. Each work activity will be assigned a time estimate by the Contractor. One day shall be the smallest time unit used.

On completion of the network diagram, the Contractor shall generate a computer printout of the schedule and provide the Owner with two (2) copies. In the event the completion date indicated by the schedule exceeds the Contract completion date, the logic and time estimates used to develop the Plan will be reviewed, changes made in the logic and time estimates, and another computer run made to generate a new schedule. This procedure shall be repeated, if necessary, to provide a Plan and Schedule meeting the Contract completion date.

When completed, the working plan and schedule will be submitted to the Architect/Engineer and the Owner for review. The working plan will identify and describe each activity, state the duration of each activity, the calendar dates for the early and late start and the early and late finish of each activity, and clearly highlight all activities on the critical path. "Total float" and "free float", as those terms are defined in ANSI Standard No. Z94.2, shall be indicated for all activities. On Contracts with a price over \$5,000,000, the CPM schedule shall also show what part of the Contract price (expressed in U.S. dollars) is attributable to each activity on the schedule, the sum of which for all activities shall equal the total Contract price. On contracts with a price over \$10,000,000, the CPM schedule shall also show the planned workforce (crew size and number of crews) and the major pieces of equipment required for each activity on the schedule. When approved by the Owner and Architect/Engineer as to compliance with the requirements of this section but not as to logic, this shall become the plan and schedule for the project.

- (b) **Project Control:** 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 CPM schedule as necessary to finish within the contractually allowed time. The scheduled completion date shall be within the period of time allowed by the Contract for completion of construction, as amended by Change Order.
- (c) **Progress Graph:** A progress graph showing the work completed to date in comparison with the work scheduled for completion and the overall project work schedule shall be provided to the Owner and to the A/E with each monthly invoice. The form of the graph shall be approved by the Architect/Engineer and the Owner; however, a bar graph/chart or a CPM schedule marked, colored or annotated to reflect the above will usually satisfy this requirement.
- (d) **Progress Delay:** Should any of the following conditions exist, the Owner may require the Contractor to prepare, at no extra cost to the Owner, a plan of action and a CPM recovery schedule for completing the Work by the contractual completion date. The plan of action and CPM recovery schedule shall explain and display how the Contractor intends to regain compliance with the original CPM schedule. The plan of action and CPM recovery schedule, when required, shall be submitted and approved prior to submission of the next monthly invoice.

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- (1) Should the Contractor's monthly progress report indicate delays such that a CPM recovery schedule is required;
 - (2) Should the CPM schedule sorted by early finish show the Contractor to be thirty (30) or more days behind schedule at any time during construction up to thirty (30) days prior to scheduled substantial completion date;
 - (3) Should the Contractor request to make changes in the logic of the CPM schedule which, in the opinion of the Architect/Engineer or the Owner, are of a major nature.
- (e) The Contractor shall prepare a schedule satisfactory to the Architect/Engineer and the Owner fixing the dates for the beginning and completion of the placing of orders for and the manufacture, the testing and the installation of materials, supplies and equipment, which schedule shall be subject to change from time to time in accordance with the progress of the work. On those projects requiring a CPM schedule, the schedule required by this paragraph shall be integrated into the CPM network.

20. SCHEDULE OF VALUES AND CERTIFICATE FOR PAYMENT (CO-12)

- (a) Before submittal of the first partial payment request under the Contract, the Contractor shall prepare for the review and approval of the Architect/Engineer and the Owner, a schedule of the estimated values listed by trades or by specification sections of the Work, totaling the amount of the Contract. Where the total project has multiple parts or phases, the Contractor shall prepare appropriate schedules of values to facilitate reviews and justifications for payments.
- (b) If the Contractor requests, or intends to request, payment for materials stored in an approved and secure manner, the Schedule of Values must indicate the amount for labor and the amount for materials, and in a supplement thereto must include an itemized list of materials for that trade or work section. The material breakdown shall be in sufficient detail to allow verification of the quantities required for the project, the quantities delivered, the Work completed, and the quantities stored on or off the site.
- (c) The "value of work completed" portion of the form shall be completed, the Contractor's certification signed and appropriate substantiating material attached to each request for payment.
- (d) The labor progress for any item shall be calculated based upon the percentage of Work complete up thru fifty percent (50%). Thereafter, the evaluation of labor progress will be based upon the effort required to complete that item or task. The material progress shall be calculated as the dollar cost of materials used in relationship to the amount estimated as necessary to complete a particular element of Work. When calculating material progress, credit shall be given for installed material as well as that stored on the site and any material stored off site which has been certified by the Architect/Engineer in accordance with Section 36 of these General Conditions.

21. ACCESS TO WORK

The Architect/Engineer, the Owner, the Owner's inspectors and other testing personnel, and inspectors from the Department of Labor and Industry shall have access to the Work at all times. The Contractor shall provide proper facilities for access and inspection.

22. SURVEYS AND LAYOUT

- (a) All necessary drawings showing property lines and the location of the building shall be furnished to the Contractor through the drawings and specifications. The Contractor shall provide competent surveying and engineering services to execute the Work in accordance with the Contractor's requirements and shall be responsible for the accuracy of these surveying and engineering services.
- (b) Such general reference points and bench marks on the building site as will enable the Contractor to proceed with the Work will be established in the drawings and specifications. If the Contractor finds that any previously established reference points have been lost or destroyed, he shall promptly notify the Architect/Engineer.
- (c) The Contractor shall protect and preserve the established bench marks and monuments and shall make no changes in locations without written notice to the Architect/Engineer and the written approval from the Owner. 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 approval of the Owner, be replaced and accurately located by the Contractor.

23. DRAWINGS AND SPECIFICATIONS

- (a) The general character and scope of the work are illustrated by the drawings and specifications. If the Contractor deems additional detail or information to be needed, he may request the same in writing from the Architect/Engineer. His 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. The Architect/Engineer shall provide such further detail and information as is necessary by the date required so long as the date indicated is reasonable. Any additional drawings and instructions supplied to the Contractor shall be consistent with Contract Documents, shall be true developments thereof, and shall be so prepared that they can be reasonably interpreted as a part thereof. The Contractor shall carry out the work in accordance with the additional detail drawings and instructions.
- (b) In case of difference between small and large scale drawings, the large scale drawings shall govern.
- (c) Where on any of the drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall apply also to all other like portions of the Work.
- (d) Where the word "similar" appears on the drawings, it shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their location and their connection with other parts of the Work.
- (e) The specifications are divided into several parts for convenience only, since the entire specifications must be considered as a whole. The divisions of the specifications are not intended to control the Contractor in dividing the work among Subcontractors or to limit the work performed by any trade. The Contractor shall be responsible for the coordination of the trades, Subcontractors and vendors engaged upon this Work.
- (f) Measurements or dimensions shown on the drawings for site features, utilities and structures shall be verified at the site by the Contractor. Do not scale measurements or dimensions from the drawings. Where there are discrepancies, the Architect/Engineer shall be consulted. Where new Work is to connect to, match with or be provided in existing Work, the Contractor shall verify the actual existing conditions and necessary dimensions prior to ordering or fabrication.

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- (g) **As-Built Drawings:** The Contractor shall maintain at the site for the Owner one copy of all drawings, specifications, addenda, approved shop or setting drawings, change orders and other modifications (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 Architect/Engineer, the Owner, the Project Inspector, the Owner's other inspectors and to the Owner's testing personnel. These "As-Built Drawings" shall be neatly and clearly marked in color during construction to record all variations from the drawings 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.
- (h) **Record Drawings:** Upon completion of the Work and prior to the final inspection, the Contractor shall deliver to the Architect/Engineer, for preparation of the Record Drawings, one complete set of "As-Built Drawings" referred to in the preceding subsection.

24. SUBMITTALS

- (a) Shop drawings, setting drawings, product data and samples generated by the Contractor for review or approval by the Architect/Engineer shall be known as submittals. The Contractor shall submit a listing of all submittals required by the Architect/Engineer 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 Architect/Engineer.
- (b) Submittals shall be forwarded to the Architect/Engineer for approval if required by the specifications or if requested by the Architect/Engineer. 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) Written submittals shall be forwarded in six (6) copies (unless otherwise specified) accompanied by a letter of transmittal which shall list the submittals, the specification numbers applicable to each, and the date shown on each submittal. Submittals shall be complete in every respect and bound in sets. Clearly marked on each submittal shall be each item, component and/or optional feature proposed to be incorporated into the project with a cross reference to the drawings or specifications needed to identify the use for which it is intended.
- (d) 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. The Contractor shall be responsible for checking all dimensions and coordinating all materials and trades to insure that the materials proposed will fit in the space available and be compatible with other material provided.
- (e) Contractor shall stamp each sheet of submittal with the Contractor's review stamp. Data submitted in a bound volume or on one sheet printed on two sides, may be stamped on the front of the first sheet only. The Contractor's review stamp shall be worded as follows:

The equipment and material shown and marked in this submittal is that proposed to be incorporated into this Project, is in compliance with the Contract drawings and specifications unless otherwise shown in bold face type or lettering and listed on a page or pages headed "DEPARTURES FROM DRAWINGS AND SPECIFICATIONS", and can be installed in the allocated spaces.

Reviewed by _____

Date _____

The person signing the review stamp shall be one designated in writing by the Contractor as having that authority. The signature shall be handwritten in ink. Stamped signatures are not acceptable.

- (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 Architect/Engineer may reject the submittal or, if he deems it to have merit, may recommend it to the Owner, who shall approve or reject it as the Owner, 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 Architect/Engineer shall be responsible to the Owner, but not to the Contractor, to verify that the submittals conform to the design concept and functional requirements of the drawings 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.
- (i) The Work shall be in accordance with approved submittals.
- (j) Unless otherwise indicated or required elsewhere in the specifications, shop drawings shall be submitted in the form of one reproducible tracing and three blue line or black line prints. Catalog cuts, product data and other nonreproducible literature except certificates shall be submitted in a minimum of six (6) copies, of which three (3) will be retained by the Architect/Engineer and the remainder returned to the Contractor.
- (k) The drawings and/or specifications may indicate that the Architect/Engineer designed or detailed a portion of the plans around a particular product (most commonly a piece of equipment). Should a different product be proposed by the Contractor and accepted, all modifications, rerouting, relocations and variations required for proper installation and coordination to comply with the design concept and requirements of the Contract Documents shall be the responsibility of the Contractor and shall be made at no extra cost to the Owner. This naming of a particular product, around which the plans were designed or detailed, is not intended to preclude the use of other products or favor the product named when a "brand name or equal" specification has been used, pursuant to Section 26 of these General Conditions. Rather it is only intended to acknowledge the reality that in many instances the Architect/Engineer must design around the dimensions and characteristics of a particular product.
- (l) Additional submittal requirements are shown in the specifications.

25. FEES, SERVICES AND FACILITIES

- (a) The Contractor shall obtain and pay for all fees and charges necessary for temporary connections to utilities and for the use of property, other than the site of the Work, for storage of materials and other purposes unless otherwise specifically stated in the specifications.
- (b) The Owner shall pay any connection charges for permanent utility connections directly to the utility supplier. The Contractor shall coordinate such connections with the utility supplier.
- (c) It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor, either directly or through his Subcontractor, 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 specified time.

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26. EQUALS

- (a) Unless otherwise stated in the specifications, the name of a certain brand, make or manufacturer is to denote the characteristics, quality, workmanship, economy of operation and suitability for the intended purpose of article desired, but does not restrict bidders to the specific brand, make, or manufacturer; it is set forth to convey to the Contractor the general style, type, character and quality of article specified.
- (b) 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 product which in the opinion of the Architect/Engineer is the equal of that specified, considering quality, capabilities, workmanship, economy of operation, useful life, compatibility with design of the work and suitability for the intended purpose will be accepted unless rejected by the Owner as not being equal.
- (c) The Contractor shall be responsible for making all changes in the Work necessary to adapt and accommodate any equivalent product which it uses. The necessary changes shall be made at the Contractor's expense.

27. AVAILABILITY OF MATERIALS

If material specified in the Contract Documents is not available on the present market, alternate materials may be proposed by the Contractor through the Architect/Engineer for approval of the Owner.

28. CONTRACTOR'S TITLE TO MATERIALS

No materials or supplies for the work shall be purchased by the Contractor or by any Subcontractor 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 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 AND WORKMANSHIP

- (a) Unless otherwise specifically provided in this contract, all equipment, material, and accessories incorporated in the Work are to be new and in first class condition. The Contractor shall furnish to the Architect/Engineer 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 required by this Contract, 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.
- (b) Unless specifically approved by the Owner or required by the specifications, the Contractor shall not incorporate any materials into the Work containing asbestos or any material known by the Contractor to contain a substance known to be hazardous to health when the building is occupied by the Owner. If the Contractor becomes aware that a material required by the specifications contains asbestos, it shall notify the Owner and the Architect/Engineer immediately and shall take no further steps to acquire or install any such material without first obtaining Owner approval.

- (c) The workmanship shall be of the highest quality found in the building industry in every respect. All items of Work shall be done by mechanics skilled in the particular task 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 Architect/Engineer, the Owner or other inspecting authorities) shall be removed and replaced to conform to the highest quality standards of the trades concerned, or otherwise corrected to the satisfaction of the Architect/Engineer, the Owner, or other inspecting authority.
- (d) Under the various sections of the 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 drawings or specifications, in which case the Architect/Engineer will be notified for an interpretation and decision.
- (e) Under the various sections of the 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 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 neither the manufacturer's printed instructions are available for installation of specific items, nor are specific code or standards given by reference to govern the installation or specific items; and where there is doubt 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 Architect/Engineer for approval of the installation procedures it proposes to follow or the specific standards governing the quality of workmanship it proposes to maintain during the installation of items in question.
- (g) During and/or at the completion of installation of any items, the tests designated in the 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, manufacturers' certificates evidencing that products meet or exceed applicable performance, warranty and other requirements, and certificates that products have been properly installed and tested shall be furnished by the Contractor prior to final inspection.

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

31. USE OF PREMISES AND REMOVAL OF DEBRIS

- (a) The Contractor shall:
 - (1) Perform his Contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or with the Work of any other 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 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 his work required to make the same conform to the drawings and specifications, and except with the consent of the Architect/Engineer not to cut or otherwise alter the work of any other contractor. The Contractor shall not damage or endanger any portion of the Work or premises, 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 of the work 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 a licensed landfill or otherwise as required by law.
- (d) The Contractor expressly undertakes, either directly or through his Subcontractor(s), before final payment, 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 thoroughly clean all glass installed under the Contract including the removal of all paint and mortar splatters and other defacements. If a Contractor fails to clean up at the completion of the Work, the Owner may do so and charge for costs thereof to the Contractor in accordance with Section 10 (b) of these General Conditions.
- (e) During and at completion of the Work, the Contractor shall prevent site soil erosion, the runoff of silt and/or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and of the Contract Documents.

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 drawings and specifications. Crushed rock, paving and other road materials from temporary roads shall not be left on the building site unless permission is received from the Owner to bury the same at a location and depth approved by the Owner.

33. SIGNS

The Contractor may, at his option and without cost to the Owner, erect signs acceptable to the Owner on the site of the Contract for the purpose of identifying and giving directions to the job. No signs shall be erected without prior approval of the Owner as to design and location.

34. PROTECTION OF PERSONS AND PROPERTY

- (a) The Contractor expressly undertakes, both directly and through his Subcontractor, to take every reasonable precaution at all times for the protection of all persons and property which may come on the building site or be affected by the Contractor's operation in connection with the Work.
- (b) The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work.
- (c) The provisions of all rules and regulations governing safety as adopted by the Safety Codes Commission of the Commonwealth of Virginia, issued by the Department of Labor and Industry under Title 40.1 of the Code of Virginia shall apply to all work under this Contract.
- (d) The Contractor shall continuously maintain adequate protection of all his work from damage and shall protect the Owner's property from injury or loss arising in connection with this Contract. He shall make good any such damage, injury or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or employees of the Owner. He shall adequately protect adjacent property to prevent any damage to it or loss of use and enjoyment by its owners. He shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, any of the Contract Documents or erected for the fulfillment of his obligations for the protection of persons and property.
- (e) In an emergency affecting the safety or life of persons or of the Work, or of the adjoining property, the Contractor, without special instruction or authorization from the Architect/Engineer or the Owner, 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 Architect/Engineer or the Owner, he shall so act immediately, without appeal. Any additional compensation or extension of time claimed by the Contractor on account of any emergency work shall be determined as provided by Section 38 of these General Conditions.
- (f) When necessary for the proper protection of the work, temporary heating of a type approved by the Architect/Engineer must be provided unless otherwise specified.

35. CLIMATIC CONDITIONS

The Contractor shall suspend any portion of Work that may be subject to damage by climatic conditions.

36. PAYMENTS TO CONTRACTOR

- (a) Unless otherwise provided in the specifications, the Owner will make partial payments to the Contractor on the basis of a duly certified and approved estimate of the Work performed during the preceding calendar month or work period as recommended by the Architect/Engineer. The Architect/Engineer will schedule a monthly pay meeting to occur no earlier than the 15th day of the month for which the payment request represents or not later than the 5th day of the following month. The Contractor will submit his estimate to be received by the Architect/Engineer at least one work day prior to the date scheduled by the Architect/Engineer for the monthly pay meeting. The Owner will review the estimate with the Architect/Engineer and the Contractor at the monthly

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pay meeting and may approve any or all of the estimate of work for payment. In preparing estimates, the material delivered on the site and preparatory work done shall be taken into consideration, if properly documented as required by Section 20 of these General Conditions, or as may be required by the Architect/Engineer so that quantities may be verified. In addition to material delivered on the site, material such as large pieces of equipment and items purchased specifically for the project, but stored off the site within the Commonwealth of Virginia, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested:

- (1) The Contractor must notify the Owner in writing, at least ten (10) days prior to the submission of the payment request, through the Architect/Engineer, that specific items will be stored off site in a designated secured place within the Commonwealth of Virginia. The Schedule of Values must be detailed to separately indicate both the value of the material and of the labor/installation for trades requesting payment for stored materials. The Contractor warrants by giving such notification and by requesting payment for material stored off site, that the storage location is safe and suitable for the type of material stored and he agrees that loss of materials stored off the site shall not relieve him of the obligation to furnish these types and quantities of materials for the project and on a schedule to meet the time completion requirements of the Contract Documents, subject to Section 43 of these General Conditions.
 - (2) Such notification, as well as the payment request, shall:
 - (a) itemize the quantity of such materials, and document with invoices the cost of said materials,
 - (b) indicate the identification markings used on the materials. Such markings shall clearly reference the materials to the particular State project.
 - (c) State the specific location of the materials. Said location must be within reasonable proximity to the job site within the Commonwealth of Virginia.
 - (d) State 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 is agreeable to such payment.
 - (e) Certify that adequate all-risk insurance has been obtained by the Contractor on the materials. Such insurance shall be in the name of the Owner and the Contractor.
 - (3) The Architect/Engineer shall indicate, in writing, to the Owner that submittals for such materials have been reviewed and meet the requirements of the drawings and specifications of the Contract Documents, that the stored materials meet the requirement of the drawings and specifications, and that such material conforms to the approved submittals.
 - (4) The Owner, through the Architect/Engineer, shall notify the Contractor in writing of his agreement to prepayment for materials.
 - (5) The Contractor shall notify the Owner in writing, through the Architect/Engineer, 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, including equipment, whether stored on or off the job 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 Owner, which consent may be granted or withheld by the Owner in its discretion if, in the opinion of the Owner, 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 Certificates of Insurance or other satisfactory evidence of compliance by the Contractor with all the requirements of Section 11 (and Section 12 if applicable) of these General Conditions have been delivered to the Owner. Further, no payments on the basis of Work performed by a Subcontractor shall be paid by the Owner until copies of any certificates of insurance required of the Subcontractor under Section 11 shall be delivered to the Owner.
- (d) In making such partial payments, there shall be retained five percent (5%) of each payment until final completion and acceptance of all work covered by the Contract, unless otherwise provided by any law, regulation or program of the government of the United States. Such retainage shall be held to assure faithful performance of the Contract including, but not limited to, payment to the Owner of all moneys due for deductive change orders, credits, uncorrected defective work, interest, damages, and the like. (Section 11-56 of the Code of Virginia)
- (e) All material and Work for which partial payments are made shall thereupon become the sole property of the Owner, 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 the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all of the terms of the Contract.
- (f) The final payment, which shall include the retainage, less any amounts due to the Owner, shall not become due until the Contractor shall deliver to the Owner through the Architect/Engineer 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 Contract less retainage. If all Subcontractors and Suppliers of labor and materials have not been paid the full amount claimed by them, less retainage, 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 Owner, 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, 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 Owner 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.
- (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 Owner for occupancy or use and the delivery of the affidavits required in Section 36(f) of these General Conditions, the Architect/Engineer shall deliver a written certificate of completion to the Owner, 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 Owner 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, and the like.

- (h) Unless there is a dispute about the compensation due to the Contractor, defects in the Work, quality of the Work, compliance with the Contract Documents, completion itself, or claims by the Owner, or other matters in contention between the parties, then within thirty (30) days after receipt and acceptance of the Schedule of Values and Certificate for Payment in proper form at the monthly pay meeting, which shall be considered the receipt date, and, in the case of a final payment, receipt of a Certificate of Completion signed by the Architect/Engineer, the Owner shall pay to the Contractor the amount approved by the Architect/Engineer, less all prior payments and advances whatsoever to or for the account of the Contractor. 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 Owner, except in instances where further appropriations are required by the General Assembly or where the issuance of further bonds is required, in which case, payment shall be made within thirty (30) days after the effective date of such appropriation or within thirty (30) days after the receipt of bond proceeds by the Owner. All prior estimates and payments including those relating to extra work may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any request for payment (CO-12) by the Contractor contains a defect or impropriety, the Owner 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 Request for Payment by the Owner from the Architect/Engineer.
- (i) Interest shall accrue on all amounts owed by the Owner to the Contractor which remain unpaid fifteen (15) 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 fifteenth 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 Owner and to calculate to the satisfaction of the Owner the interest due. In no event shall the rate of interest charge exceed the rate of interest established pursuant to §58-1160 of the Code of Virginia. No interest shall accrue when payment is delayed because of disagreement between the Owner and the Contractor regarding the quantity, quality or timeliness of the Work, including, but not limited to, all compliance with Contract Documents or the accuracy of any Request for Payment received. The 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. This shall not 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 Owner for deductive change orders or to amounts due on any claims by the Owner. The date of mailing of any payment by the U.S. Mail is deemed to be payment to the addressee.
- (j) The acceptance by the Contractor of the final payment shall be and operate as a release to the Owner of all claims by the Contractor and of all liability to the Contractor whatever, including liability for all things done or furnished in connection with this Work.
- (k) No certificate for payment issued by the Architect/Engineer, and no payment, final or otherwise, nor partial or entire use or occupancy of the Work by the Owner, shall be an acceptance of any Work or materials not in accordance with this Contract, nor shall the same relieve the Contractor of responsibility for faulty materials or workmanship or operate to release the Contractor or his Surety from any obligation under the Contract or the Standard Performance Bond and the Standard Labor and Material Payment Bond.

37. PAYMENTS BY CONTRACTOR

Except in cases of bona fide disputes, or where the Contractor has some other justifiable reason for delay, the Contractor shall pay:

- (a) For all transportation and utility services not later than the end of the calendar month following that in which the services are rendered;
- (b) To each of his Subcontractors and Suppliers, not later than seven (7) calendar days after receipt of amounts paid to the Contractor by the Owner, the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or the materials furnished by the Supplier less a retainage of not more than five percent (5%), that retainage being the same money, not additional money, retained by the Owner from the payment to the Contractor.
- (c) In the case of bona fide disputes or where the Contractor has some other justifiable reason to delay payment, not later than seven (7) calendar days after receipt of amounts paid to the Contractor by the Owner, the Contractor shall notify the Owner and Subcontractor or Supplier, in writing, of his intention to withhold all or a part of the Subcontractor's or Supplier's payment with the reason for nonpayment.
- (d) The Contractor shall pay interest to the Subcontractor or Supplier on all amounts owed by the Contractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from the Owner for work performed by the Subcontractor or materials furnished by the Supplier under the contract, except for amounts withheld as allowed in subsection (c) of this Section. Interest shall accrue at the rate specified in subsection (i) of Section 36 of these General Conditions.
- (e) Contractor's obligation to pay an interest charge to the Subcontractor or Supplier pursuant to subsection (d) of this Section may not be construed to be an obligation of the Owner.
- (f) A contract modification may not be made for the purpose of providing reimbursement to the Contractor for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

38. CHANGES IN THE WORK

- (a) The Owner may at any time, by written order utilizing the Commonwealth of Virginia change order form (CO-11) and without notice to the sureties, make changes in the drawings and specifications of this Contract which are within the general scope of this Contract, except that 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. For fixed price contracts in excess of \$75,000, a change costing \$15,000 or more or a change costing in excess of twenty-five per cent (25%) of the original contract price, whichever is less, shall require the prior approval of the change order by the Governor or his designee. For fixed price contracts of \$75,000 or less, a change costing \$10,000 or 25% or more of the original contract price, whichever is greater, shall require the prior approval of the change order by the Governor or his designee. Even though a single change order is not of sufficient size to require the approval of the Governor or his designee under the standards set forth in the preceding sentences, once the total of all change orders would meet those standards, the first change order which causes the cumulative total to exceed those standards and all subsequent change orders must have the approval of the Governor or his designee.

In making any change, the charge or credit for the change shall be determined by one of the following methods as selected by the Owner:

- (1) By a mutually agreed change to the Contract price and/or time allowed for completion of the Work. 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. [See (d) and (e) below]
 - (2) By using unit prices and calculating the number of net units of Work in each part of the Work which is changed, either as the Work progresses or before Work on the change commences, and by then multiplying the calculated number of units by the applicable unit price set forth in the Contract or multiplying by a mutually agreed unit price if none was provided in the Contract. No additional percentage markup for overhead or profit shall be added to the unit prices.
 - (3) By ordering the Contractor to proceed with the change to the Work and to keep and present, in such form as the Owner may direct, an accurate itemized account of the cost of the changes to the Work, both additive and deductive, together with all vouchers, invoices, and labor records necessary to substantiate the account. The cost shall include an allowance for overhead and profit as set forth in Subsection (d) and (e) below.
- (b) The Contractor shall review any Owner directed change and shall respond in writing within fourteen (14) calendar days after receipt of the proposed change (or such other reasonable time as the Owner may direct), stating the effect of the proposed change upon his Work, including any increase or decrease in the Contract time and price. The Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the change in Contract price.
- The Owner shall review the Contractor's proposal 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, unless approval by the Department of General Services and/or by the Governor or his designee is required.
- (c) In figuring changes, any instructions for measurement of quantities set forth in the specifications shall be followed.
 - (d) The percentage for overhead and profit to be used in calculating both additive and deductive Changes in the Work (other than Changes covered by unit prices) shall not exceed the percentages for each category listed below. Said percentages for overhead and profit shall be applied only on the net cost of the changed Work (i.e. difference in cost between original and revised Work):
 - (1) If a Subcontractor does all or part of the changed Work, the Subcontractor's markup for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). The General Contractor's mark-up on the subcontractor's price shall be a maximum of ten percent (10%).
 - (2) If the General Contractor does all or part of the changed Work, its markup for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%).
 - (3) If a Sub-subcontractor at any tier does all or part of the changed work, the Sub-subcontractor's markup on that Work shall be a maximum of fifteen percent (15%). The markup of a sub-subcontractor's work by the General Contractor and all intervening tiers of subcontractors shall not exceed a total of ten percent (10%).
 - (4) Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract price attributable to that Work shall be deducted from the Contract price. However, in the event that material submittals have been approved and orders placed for said materials, a lesser amount, but in no case less than eighty percent (80%) of the Contract price attributable to that Work, shall be deducted from the Contract price. The credit to the

Owner for reduced premiums on labor and material bonds and performance bonds shall in all cases be one hundred percent (100%).

- (e) Allowable costs for net changes in the Work may include all labor, material, sales tax, the rental of power tools and equipment actually used or a reasonable price for the use of power tools and equipment owned by the Contractor based upon their life expectancy and purchase price, utilities, pro rata charges for foremen, and all payroll charges such as employer's FICA contribution, Public Liability and Workers' Compensation Insurance, but only if all such costs are incurred as the direct result of the changes in the Work. Items considered as overhead, which are included in the percentage markup allowed by Section 38 (d) and which cannot therefore be allowed as cost items, shall include such things as insurance other than that mentioned above, superintendent, timekeeper, clerks, watchmen, use of small tools, incidental job costs, general office expenses and all other expenses of whatever type. The change in cost for labor and materials bonds and for performance bond relative to the value of the change order shall be allowable cost but shall not be marked up.
- (f) All change orders must indicate that the Contract Time for Completion is not changed or is either increased or decreased by a specific number of days. The old Time for Completion and, if there is one, the new Time for Completion must be stated. The Contractor must provide written justification for an extension of the Time for Completion to the Architect/Engineer and to the Owner. The written justification must demonstrate an anticipated actual increase in the time required to complete the Work beyond that allowed by the Contract as adjusted by prior change orders or amendments to the Contract, not just an increase or decrease in the time needed to complete some portion of the total Work. When a CPM schedule is required by the Contract, no increase to the Time for Completion shall be allowed unless, and then only to the extent that, the additional or changed Work increases the length of the critical path. Approved increases in time required to complete the Work shall be added to the Time for Completion. Decreases in time as a result of the change order shall be demonstrated by a decrease in the critical path of the Work if CPM scheduling is properly used and updated by the Contractor. If not, the Owner shall determine the appropriate decrease by the best means possible. Approved decreases in the time needed to complete the Work shall be deducted from the Contract completion date. The change to time and Contract price allowed by each change order shall include all time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the project. Failure to include a change to time and Contract price in a change order shall waive any change to the time and Contract price unless the parties mutually agree in writing to postpone a determination of the change to time and price resulting from the change order. Such a determination may be postponed not more than forty-five (45) days to give the Contractor an opportunity to demonstrate a change in the time and price needed to complete the Work.

39. EXTRAS

If the Contractor claims that any instructions given to him by the Architect/Engineer or by the Owner, by drawings or otherwise, involve extra Work not covered by the Contract, then, except in emergencies endangering life or property, he shall give the Architect/Engineer and the Owner 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 clear to the Contractor that a change will involve extra Work, written notice given within fourteen (14) days that the change may involve extra Work will be considered sufficient notice. If the Owner agrees that the Work involved in such instruction was extra work, a change order shall be issued as provided in Section 38 of these General Conditions, and the additional compensation to be paid therefor shall be determined by one of the three (3) methods provided in said Section 38, selected by the Owner. Except as otherwise specifically provided, no claims for extra Work shall be allowed unless the notice required by this Section is given by the Contractor within the time allowed and unless such Work is performed pursuant to the written order of the Owner as provided in said Section 38. The Owner's written order shall designate which of the three methods for computing charges and credits set forth in said Section 38(a) [(1), (2) and (3)] shall be used.

40. CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under an order of any court or other public authority for a period of ninety (90) days through no fault of the Contractor or of anyone employed by him, or if the Owner should fail to pay to the Contractor within thirty (30) days any sum certified by the Architect/Engineer when no dispute exists as to the sum certified, then the Contractor may, upon ten (10) calendar days written notice to the Owner and the Architect/Engineer, stop work or terminate the Contract and recover from the Owner payment for the cost of the Work actually performed, together with overhead and profit thereon, but profit shall be recovered only to the extent that the Contractor can demonstrate that he would have had profit on the entire Contract if he had completed the Work. The Contractor may not receive profit or any other type of compensation for parts of the Work not performed. The Contractor may recover the cost of physically closing down the job site, but no other costs of termination. The Owner may offset any claims it may have against the Contractor against the amounts due to the Contractor. In no event shall termination of the Contract by the Contractor terminate the obligations of the Contractor's surety on its payment and performance bonds.

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

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 Owner may terminate the Contract. If the Contractor should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to subcontractors or suppliers of material or labor, or persistently disregard laws, ordinances or the written instructions of the Architect/Engineer, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner, may terminate the Contract.

Prior to termination of the Contract, the Owner shall give the Contractor and his surety ten (10) calendar days written notice, during which the Contractor and/or his surety may rectify the cause of the termination. If rectified to the satisfaction of the Owner within said ten (10) days, the Owner may rescind its notice of termination. If it does not, the termination for cause shall become effective at the end of the ten day (10) notice period. In the alternative, the Owner may postpone the effective date of the termination notice, at its sole discretion, if it should receive reassurances from the Contractor and/or its surety that the causes of termination will be remedied in a time and manner which the Owner finds acceptable. If at any time more than ten (10) days after the notice of termination, the Owner 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 Owner may immediately terminate the Contract for cause by giving written notice to the Contractor and its surety. In no event shall termination for cause terminate the obligations of the Contractor's surety on its payment and performance bonds.

Notice of terminations, whether initial or given after a period of postponement, may be served upon the Contractor and the surety by mail or any other means at their last known places of business in Virginia or elsewhere, by delivery to any officer or management/supervisory employee of either wherever they may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

Upon termination of the Contract, the Owner shall take possession of the premises and of all materials, tools and appliances 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 Owner, together with any other expenses of terminating the Contract and having it completed by others.

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

Termination of the Contract under this section is without prejudice to any other right or remedy of the Owner.

42. TERMINATION BY OWNER FOR CONVENIENCE

- (a) Owner may terminate this Contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease Work and remove from the project site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner'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,
 - (2) Amounts due for work performed subsequent to the latest 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 for lost profits or for any other type of contractual compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature.
- (b) In no event shall termination for the convenience of the Owner 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 fails to complete the Work within the time fixed by the Contract for the completion of the same, the Contractor shall be liable to the Owner in the amounts set forth in the Supplemental General Conditions 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. In addition to damages for delay, the Contractor will also be liable for any and all actual damages sustained as a result of any other breach of the Contract other than by delay, including abandonment of the Contract. If liquidated damages are not so fixed in the Supplemental General Conditions, the Contractor shall be liable for any and all actual damages sustained as a result of delay.
- (b) If the Contractor is unreasonably delayed at any time in the progress of the Work by any act, omission, or neglect of the Owner, its agents or employees which are beyond their control, or if the Contractor is delayed at any time in the progress of the Work by any act, omission or neglect of any separate contractor engaged by the Owner, or by strikes, fires, unusual delays in transportation, abnormal adverse weather conditions or unavoidable casualties not caused by the Contractor, or by any other cause beyond the Contractor's control, the time for Substantial Completion or Final Completion, as applicable, shall be extended 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 for extended general conditions expense, other expense related to the delay, overhead, or profit for the period covered by such extension. In the event a CPM schedule was required by the Contract, no extension shall be granted unless the Contractor demonstrates a delay in the Substantial Completion or Final

Completion of the Work, as applicable, by showing a delay on the critical path of the CPM schedule.

- (c) In the event a delay is caused by the Owner, the Architect/Engineer or any other separate contractor employed by the Owner, any party for whom the Contractor deems the Owner responsible, or the agents and employees of any of them, the Contractor shall inform the Owner and the Architect/Engineer immediately at the time of the occurrence by fastest means available and shall give written notice within two (2) working days. The Contractor's notice to the Owner 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 Owner 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 Owner or parties for whom the Owner is responsible. If the delay is not then resolved, the Contractor may submit a request for change order in accordance with Sections 38 and 39 or submit a claim as provided for in Section 47. In the event of other delays, the Contractor shall give the Owner and Architect/Engineer written notice within ten (10) days.

No extension of time shall be given for a delay if the Contractor failed to give notice in the manner and within the time prescribed. Furthermore, no extension of time shall be given for any delay unless a claim therefor is made in writing to the Owner, with a copy to the Architect/Engineer, 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 Owner and Architect/Engineer 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 based upon that cause.

- (d) Requests for compensation for delays must be substantiated by itemized data and records clearly showing that the Work delayed was on the critical path and that the costs are directly attributable to the delay in the Work claimed.
- (e) If the Contractor makes a claim against the Owner for costs and damages due to the alleged delaying of the Contractor in the performance of the Work, the Contractor shall be liable to the Owner and shall pay the Owner for a percentage of all costs incurred by the Owner 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. (Section 11-56.2.C., Code of Virginia)
- (f) Any change of the Contract completion date shall be accomplished only by issuance of a change order.
- (g) 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 Owner to occupy and utilize the facility for normal operation not later than the time/date indicated for completion.
- (h) If liquidated damages are provided by the Supplemental General Conditions, the following provisions apply:
- (1) Subject to the provisions of the General Conditions allowing for extension of time allowed for completion of the Work, if the Work is not substantially completed by the date required in the Contract, the Contractor shall owe to the Owner, not as a penalty but as Step One liquidated damages, the sum stated in the Supplemental General Conditions for Step One liquidated damages for each and every calendar day of delay in substantial completion.

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- (2) Once the Work is substantially complete, the accrual of Step One liquidated damages shall stop 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 by the thirtieth (30th) calendar day after substantial completion, and if any extension of time is not granted by the Owner, the Contractor shall owe to the Owner, not as a penalty but as Step Two liquidated damages, the sum stated in the Supplemental General Conditions as Step Two liquidated damages for each and every calendar day of delay in Final Completion.

44. INSPECTION FOR SUBSTANTIAL COMPLETION AND FINAL INSPECTION

The Contractor shall notify the Owner, in writing, that the Work will be ready for inspection to determine if it is substantially complete and ready for testing on or after a certain date, which date shall be stated in the notice. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the Architect/Engineer, who will attach his endorsement as to whether or not he concurs in the Contractor's statement that the Work will be ready for inspection and testing on the date given. The Architect/Engineer's endorsement is a convenience to the Owner only and shall not relieve the Contractor of his responsibility in the matter nor shall the Architect/Engineer's endorsement be deemed to be evidence that the Work was substantially complete and ready for inspection and testing. Inspection and testing shall take place at a time(s) mutually agreeable to the Contractor, Owner and Architect/Engineer. The Contractor shall furnish access for the inspection as provided in Section 21 of these General Conditions. The inspection shall determine if substantial completion has been accomplished and shall produce 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.

The Contractor shall notify the Owner, in writing, that the Work will be ready for final inspection and testing on or after a certain date, which date shall be stated in the notice. 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 Owner and final payment shall be made in accordance with Section 36 of these General Conditions.

The Architect/Engineer shall conduct the inspections. The Owner may elect to have other persons of its choosing also participate in the inspections. If one or more reinspection is required, the Contractor shall reimburse the Owner for all costs of reinspection or, at the Owner option, the costs may be deducted from payments due to the Contractor.

The Owner will require that a representative of the State Fire Marshal's Office either be present at the inspection or otherwise inspect the completed Work and advise the Owner as to the acceptability of the Work as meeting the fire safety requirements of the applicable building code.

45. GUARANTEE OF WORK

- (a) Except as otherwise specified, all work shall be guaranteed by the Contractor against defects resulting from the use of inferior materials, equipment or workmanship for one (1) year from the date of final acceptance of the entire project by the Owner in writing. Equipment and facilities, which have seasonal limitations on their operation, shall be guaranteed for one (1) full year from the date of seasonally appropriate tests and acceptance, in writing, by the Owner.
- (b) If, within any guarantee period, defects are noticed by the Owner or Architect/Engineer which require repairs or changes in connection with the guaranteed work, those repairs or changes being in the opinion of the Architect/Engineer rendered necessary as the result of the use of materials, equipment or workmanship, which are defective, or inferior, or not in accordance with the terms of

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the Contract, then the Contractor shall, promptly upon receipt of notice from the Owner, such notice being given not more than two weeks after the guarantee period expires, and without expense to the Owner:

- (1) Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein;
 - (2) Make good all damage to the structure or site or equipment or contents thereof, which, in the opinion of the Architect/Engineer is the result of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the contract; and
 - (3) Make good any work or materials or the equipment and contents of structures or the site disturbed in fulfilling any such guarantee.
- (c) In any case, where in fulfilling the requirements of the Contract or any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such work to a condition satisfactory to the Architect/Engineer and guarantee such restored work to the same extent as it was guaranteed under such other Contract.
- (d) If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected and the Contractor and his surety shall be liable for all expense incurred.
- (e) All special guarantees applicable to definite parts of the work that may be stipulated in the specifications or other papers forming a part of the Contract shall be subject to the term of this section during the first year of the life of such special guarantee.
- (f) Nothing contained in this section shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including liability for defective work under Section 30 of the General Conditions. Section 45 of the General Conditions relates only to the specific obligation of the Contractor contained in this section to correct the work and does not limit the time within which his obligation to comply with the Contract Documents may be sought to be enforced, nor of the time within which proceedings may be commenced to establish the Contractor's liability with respect to his other obligations under this Contract.
- (g) In the event the work of the Contractor is to be modified by another Contractor, either before or after the Final Inspection provided by Section 44 of the General Conditions, the first Contractor shall remain responsible in all respect under the Guarantee of Work given in Section 45 of the General Conditions, and under any other warranties provided in the General Conditions or by law. However, the Contractor shall not be responsible for any defects in material or workmanship introduced by the contractor modifying its work. Both the first Contractor and the contractor making the modifications shall each be responsible solely for the work done by each. The Contractor modifying the earlier work shall be responsible for any damage to or defect introduced into the work which it is modifying. If any contractor shall claim that another contractor has introduced defects of materials and/or workmanship into the work of the first, it shall be the burden of the contractor making the claim to clearly demonstrate the nature and extent of such introduced defects and the responsibility of the other contractor. Any contractor modifying the work of another shall have the same burden if he asserts defects to have been caused by the contractor whose work he is modifying.

46. ASSIGNMENTS

Neither party to the Contract shall assign the whole or any parts of the Contract without the written consent of the other, nor shall the Contractor assign any moneys due or to become due to him hereunder, without the previous written consent of the Owner. Consent to assignment shall not be unreasonably withheld.

47. CONTRACTUAL DISPUTES (Section 11-69)

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. A written decision upon any such claims will be made by the Owner within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the Owner. The Contractor may not institute legal action prior to receipt of the Owner's decision on the claim unless he fails to render such decision within 120 days. The decision of the agency head or other signatory on the Contract 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 Section 11-70 of the Code of Virginia. Failure of the Owner to render a decision within 120 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 Owner's failure to render a decision within 120 days shall be the Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 11-71 of the Code of Virginia has been established for contractual claims under this Contract.

48. ASBESTOS

- (a) This subsection applies to projects involving existing buildings where asbestos abatement is not a part of the Work. The Scope of this project has been reviewed and a comprehensive survey conducted by an individual licensed by the Virginia Department of Commerce to conduct building inspections for asbestos containing materials in buildings. The Owner has attempted to remove all asbestos containing material that may become friable or damaged during this project.

If the Contractor discovers or inadvertently disturbs any material that may contain asbestos that has not been previously identified, that was overlooked during the removal, or which was deemed not to be friable or which was encapsulated, the Contractor shall stop work in the area containing the asbestos, secure the area, and notify the Owner and the Architect/Engineer immediately by telephone or in person with written notice as soon as possible. The Owner will have the suspect material sampled.

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

If the material disturbed is not within the Contractor's authorized Work and/or Work area or under this Contract, the Contractor will pay for all associated sampling and abatement costs.

- (b) If asbestos abatement is included as a part of the Work, the Contractor shall assure that the asbestos abatement work is accomplished by those duly licensed as described in Section 3 of these General Conditions and in accordance with the specific requirements of the Contract Documents.
- (c) If asbestos abatement is included as part of the Work, the licensed asbestos Subcontractor shall in the insurance required under Section 11 (d) of these General Conditions name the Commonwealth of Virginia, the Contractor, and the Architect/Engineer as additional insureds.

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49. TRAINING, OPERATION AND MAINTENANCE OF EQUIPMENT

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

50. PROHIBITION OF ALCOHOL AND OTHER DRUGS AT JOBSITE

- (a) The Contractor shall establish, maintain and enforce policies which prohibit the following acts by all contractor, subcontractor and supplier personnel at the jobsite:
 - (1) the manufacture, distribution, dispensation, possession, or use of alcohol or other drugs in the workplace, except possession and medically prescribed use of prescription drugs.
 - (2) the impairment in the workplace from the use of alcohol or other drugs, including impairment from prescription drugs.
- (b) The Contractor shall post a copy of the policy in a conspicuous place at the jobsite and assure that all Contractor, subcontractor and supplier personnel entering the jobsite are informed of the policy.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
JOHN MARSHALL COURTS BUILDING

LISA C. PECK, Administratrix
of the Estate of William R.
Peck, Jr., Deceased,

Plaintiff,

v.

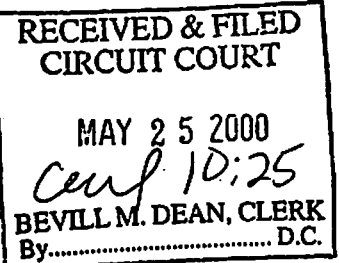
SAFWAY STEEL PRODUCTS, INC.,
and HEK PLATFORMS & HOISTS, INC.,

Defendants.

Case No.
LF-2314-4

DEPOSITION OF JOHNNY L. POWERS

March 27, 2000



Richmond, Virginia

HALASZ REPORTING & VIDEO
P.O. Box 1644
Richmond, Virginia 23218-1644
(804) 741-5215
Reported by: George Halasz, RDR

COPY

1 A No, I don't. About 16.

2 Q 16 floors?

3 A 16, right.

4 Q So the scaffolding was 16 stories high,
5 the structure?

6 A I believe so, but again, that's going
7 from memory.

8 MR. SKILLING: Do you all have
9 anything?

10 MR. KILDUFF: Yeah, I have a couple
11 questions.

12 MR. SKILLING: Go ahead.

13 EXAMINATION

14 BY MR. KILDUFF:

15 Q Mr. Powers, let me refer you to what's
16 been previously marked as Exhibit No. 4, and can you
17 describe what that document is?

18 A This is White Construction's bid to
19 perform the work at Sanger Hall.

20 Q And it has parts A, B, C and D; is that
21 correct?

22 A That's correct.

23 Q And does that describe basically the
24 work that was performed by White Construction Company
25 based on their contract with Virginia Commonwealth?

1 A Yes, sir.

2 Q Did Safway perform any functions under
3 either part A, part B, part C or part D of this bid?

4 A No, sir.

5 Q Did Safway perform any functions other
6 than related to the scaffolding?

7 A No, sir.

8 Q And you mentioned that that was means
9 and methods; is that correct?

10 A Yes, sir.

11 Q Could you explain what you mean by
12 that?

13 A When a general contractor bids a
14 project, he has to perform all of the work in the
15 contract documents which leaves them, the owner, with
16 a finished product, however, the owner does not
17 normally tell the general contractor how to do the
18 work, he just -- he wants the finished product. He
19 don't care how you give it to him. So means and
20 methods is the way the contractor decides to furnish
21 the owner a finished product.

22 Q Now, does White Construction ever
23 install multi-level scaffolding?

24 A No, sir.

25 Q Does White Construction have the

1 technical know how how to do that?

2 A No, sir.

3 Q Do you supervise Safway as they are
4 putting up the scaffolding?

5 A No, sir.

6 Q Does Safway supervise their own
7 employees?

8 A Yes, sir.

9 Q When the scaffolding is being put up,
10 are your men working side by side with them or are
11 they in some other place?

12 A We're at another place. We don't work
13 on the scaffolding while it is being moved, erected
14 or shifted around.

15 Q When the scaffolding was initially put
16 up on this job, were any White Construction employees
17 there?

18 A I don't believe so.

19 Q Looking at Exhibit No. 10, which you
20 previously had shown to you --

21 MR. SKILLING: Bill, I just put a
22 sticker on that, Exhibit 4, so we'll have a full set.

23 MR. KILDUFF: Okay. Great.

24 THE DEPONENT: Okay.

25 (December 4, 1996, bid marked Powers

1 Dep. Ex. No. 4.)

2 BY MR. KILDUFF:

3 Q Is this a standard contract agreement
4 that White Construction uses?

5 A It is -- yeah, it is a standard
6 document that we use for all the items that we
7 perform.

8 Q Do you use it for suppliers of products
9 to the job site?

10 A In some instances. It is just a
11 uniform document, so any -- a lot of the major
12 suppliers will receive this same document.

13 Q All right. That's all I have.

14 MR. SKILLING: Just a couple. I'm
15 sorry, John. Do you have any?

16 MR. CARSTENS: My understanding is that
17 this deposition is limited to the issues raised by
18 the plea.

19 MR. SKILLING: Plea, that's correct.

20 MR. CARSTENS: I don't have any
21 questions in light of that restriction.

22 EXAMINATION

23 BY MR. SKILLING:

24 Q I have just got some follow-up,
25 Mr. Powers. The subcontract which was Exhibit 10

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts Building

LISA C. PECK, administratrix of)
The Estate of William R. Peck, Jr., deceased,)
)
Plaintiff,)

v.)

Case No. LF-2314-4

SAFWAY STEEL PRODUCTS, INC.,)

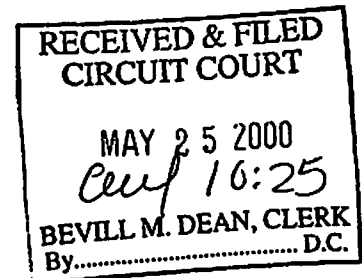
and)

HEK PLATFORMS & HOISTS, INC.,)

and)

DUNBAR, MILBY, WILLIAMS, PITTMAN)
& VAUGHAN, P.C.,)

Defendants.)



DEFENDANT SAFWAY STEEL PRODUCTS, INC.'S
ANSWERS AND RESPONSES TO PLAINTIFF'S FIRST INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendant Safway Steel Products, Inc. ("Safway"), subject to and without waiving any of the Objections previously served, answers and responds to Plaintiff's First Interrogatories and Requests for Production as follows:

INTERROGATORIES

1. Please state whether you manufactured the bracing that was used in the scaffolding during the Sanger Hall wall repair, Phase 11. If not, state the name, address and phone number of the entity who did.

ANSWER: Safway manufactured some of the bracing used in the Project. It is possible that some of the bracing used in the Project may have been manufactured by BilJax, Archibald, Ohio.

2. State whether you leased the scaffolding and bracing that was used on the Sanger Hall wall repair project to White Construction. If not, state the name, address and phone number of the entity that did.

ANSWER: Yes.

3. State the name, address, occupation of the person(s) most knowledgeable with the design of the scaffolding for the Sanger Hall project, Phase 11.

ANSWER: Dale Lindermer. Engineer. Safway Steel Products, Inc. Milwaukee, Wisconsin.

4. State the name and business address of any other hoist manufacturers whose products (hoists) have been incorporated into Safway scaffolds and/or leased by Safway.

ANSWER: See Objection previously made.

5. For those manufacturers identified in Interrogatory number 4 above, state whether the hoist gates on these manufacturers' products have any mechanism or device to restrict or limit the degree of travel of the gate.

ANSWER: See Objection previously made.

6. If you have received complaints from any lessees of Safway scaffold systems that incorporate HEK hoists concerning the gate of the HEK hoists, state the name(s), address(es) and phone number(s) of the person(s) making such complaints, the location at which the scaffolding system was used, the date of the use of such scaffolding systems, and the nature of the complaint(s). If such complaint(s) were in writing, produce copies of all such complaints.

ANSWER: See Objection previously made.

7. State whether you have any liability insurance or whether you are covered pursuant to a program of self-insurance to cover you for any liability that may arise out of this case? This question includes all coverages available to you.

ANSWER: See Objection previously made.

8. If the answer to interrogatory numbered 7 above is in the affirmative, state the name of the insurance companies providing such coverage, if applicable, and state the limits of such insurance and/or self-insurance, and state the name and address of the policyholder.

ANSWER: See Objection previously made.

9. State the name, address, and phone number of any person known by you, or anyone acting on your behalf, who has knowledge of any facts regarding the accident in question and/or the injuries received by the plaintiff's decedent as a result of the accident.

ANSWER:	Gilbane Construction, Inc. Personnel	Cheryl Nunnally
	Project Subcontractors and Material men	Randy Powers
	White Construction, Inc. Personnel	Venable Johnson

John Hirsch
Gary Peck

Safway reserves the right to supplement this Answer in accordance with the Rules.

10. State and separately identify all documents or other writings or portions thereof that you intend to introduce into evidence at the trial of this action.

ANSWER: See Objection previously made.

11. Identify any expert you intend to call at the trial of this matter, the subject matter on which the expert is expected to testify, the substance of the expert's facts and opinions, a summary of the grounds for each opinion, and produce a copy of any expert's reports/records.

ANSWER: See Objection previously made. Safway has not yet determined which expert(s), if any, it may call to testify at trial, but will seasonably supplement its response hereto.

12. If you allege in your Grounds of Defense that the plaintiff's decedent was contributorily negligent or assumed the risk of his injury, list all facts upon which you rely to support those allegations and list the persons from whom you obtained those facts and allegations.

ANSWER: Plaintiff's decedent did not discharge his duties as the competent person on the job for White Construction in several respects, including but not limited to improperly operating and riding the materials hoist, permitting others to do so, permitting and not reporting the overloading or other misuse of the scaffolding, permitting or not preventing the alteration of the scaffolding, misrepresenting directions from HEK with respect to riding the hoist, permitting potential dangerous conditions to exist and not correcting them, improperly using the hoist as a walk-through, not pursuing and receiving adequate training, ascending the hoist while in an unstable medical condition. And not supervising other contractors adequately with regard to the

foregoing. Safway's investigation is continuing, and it reserves the right to supplement this Answer in accordance with the Rules.

13. If you allege that the plaintiffs decedent's medical expenses are not reasonable and necessary and were not proximately caused by the accident, list all facts upon which you rely to support that allegation, list the names and addresses of all individuals from whom you obtain the facts or documents that support your allegation, and please produce any documents which support that allegation.

ANSWER: Safway's investigation is continuing, and it reserves the right to supplement this Answer in accordance with the Rules.

14. Have you ever claimed, or do you presently claim, that the accident occurred due to the actions of a party or thing not presently a part of this lawsuit? If so, please set forth any facts that serve as a basis of this claim.

ANSWER: Gilbane Construction, Inc., White Construction, Inc., the decedent and the "competent person(s)" of each contractor and subcontractor had an affirmative duty to inspect, detect and correct any safety deficiencies on or in the scaffolding and to notify Safway thereof, which they each failed to do. A list of subcontractors or suppliers known or believed by Safway is attached hereto. Answering further, Safway incorporates and refers to its Third Party Motion for Judgment filed herein. Safway's investigation is continuing, and it reserves the right to supplement this Answer in accordance with the Rules.

REQUESTS FOR PRODUCTION

Subject to and without waiving it previously filed Objections, Safway responds as follows:

1. Please produce any and all drawings of the scaffolding for the Sanger Hall wall repair project, Phase 11.

RESPONSE: Documents responsive to this Request will be made available at a time and location and in a manner mutually convenient to the parties and their counsel.

2. Please produce any and all instruction manuals and/or installation manuals regarding the scaffolding or bracing used in the Sanger Hall wall repair project, Phase 11.

RESPONSE: Documents responsive to this Request will be made available at a time and location and in a manner mutually convenient to the parties and their counsel.

3. Please produce any and all contracts by or between White Construction, the Commonwealth of Virginia, Safway, HEK, or any other third parties regarding the Sanger Hall wall repair project, Phase 11.

RESPONSE: To the extent that Safway has any such documents, documents responsive to this Request will be made available at a time and location and in a manner mutually convenient to the parties and their counsel.

4. Please produce any correspondence by and between Safway and White Construction regarding the scaffolding used during the Sanger Hall wall repair project both before and after the accident in question.

RESPONSE: Documents responsive to this Request will be made available at a time and location and in a manner mutually convenient to the parties and their counsel.

5. Please produce any and all documents and photographs, videotapes, etc. of any accident reconstruction performed by you or on your behalf following plaintiff's decedent's accident.

RESPONSE: See Objection previously made.

6. Produce any and all documents that you contend limited or disclaimed any warranties or remedies associated with the scaffolding in question.

RESPONSE: Documents responsive to this Request will be made available at a time and location and in a manner mutually convenient to the parties and their counsel.

7. Please produce any and all photographs taken of the scaffolding involved in the accident in question, and any photographs, diagrams, drawings or plats taken of the accident scene in the possession of the defendant, the defendant's insurer, or the defendant's attorney.

RESPONSE: See Objection previously made.

8. Please produce any and all estimates and/or repair bills prepared by the defendant, the agents of the defendant, or anyone at the request of the agent and in the custody of the defendant at this time, of the scaffolding involved in the accident in question.

RESPONSE: Documents responsive to this Request will be made available at a time and location and in a manner mutually convenient to the parties and their counsel.

9. If any photographs, motion pictures, videotaped recordings, or tape recorded statements have been taken of the scaffolding, please list the name, address and phone number of the individual(s) taking said photographs, motion pictures, videotapes, or recorded statements, and indicate the date taken.


RESPONSE: See Objection previously made.

10. Please produce any daily logs and/or maintenance records of the Sanger Hall wall repair project kept by the defendant.

RESPONSE: Documents responsive to this Request will be made available at a time and location and in a manner mutually convenient to the parties and their counsel.

Safway Steel Products, Inc. reserves the right to supplement these responses should it be determined that additional documents are responsive.

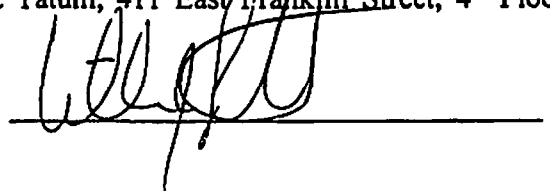
SAFWAY STEEL PRODUCTS, INC.
By Counsel



William J. Pantele
James C. Skilling
Pamela M. Herrington
BUTLER, MACON, WILLIAMS & PANTELE, P.C.
1309 East Cary Street, Second Floor
Richmond, VA 23219

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Answers to Interrogatories and Resquest for Production of Documents were sent via facsimile this 22nd day of November, 1999 to William B. Kilduff, Esquire, Emroch & Kilduff, 3600 West Broad Street, Suite 700, Richmond, VA 23230-0856, and L. Bradford Haskin, Esquire, First Union Building, 500 East Plume Street, Suite 400, Norfolk, VA 23510, and via first class mail to Terry L. Lazon, Esquire, Jordan, Coyne & Savits, 10486 Armstrong Street, Fairfax, VA 22030 and Stephan F. Andrews, Esquire, Wright, Robinson, Osthimer & Tatum, 411 East Franklin Street, 4th Floor, Richmond, VA 23219.

A handwritten signature in dark ink, appearing to read "W. B. Kilduff", is written over a horizontal line.

ITEM DESCRIPTION	SUPPLIER	CONTRACT
Copper Flashing	Air Metal Corporation 7608 Compton Road Richmond, Virginia 23228	Doug Smith 262-1004 Fax: 262-6888
Miscellaneous Steel (05120) Misc. Angles for Louvers	Andrews-Joyner Iron Works P. O. Box 1128 Petersburg, Virginia 23804	Don Hills 733-5333 / 796-2855 Fax: 733-1024
Copper Flashing	Cheney Flashing Co. Box 818 Trenton, New Jersey 08605-0818	Ridge Fell (609) 394-8175 Fax: (609) 394-3391
Masonry Restoration-Sec. 04525	Classic Masonry 7446 Adams Farm Road Mechanicsville, Virginia 23111	Paul McDaniel 559-2898/Mobile: 359-6851 Fax: 559-1261
Demo Scaffold, Msc. Carpentry	Connock's Complete Home Care 11130 Stilton Drive Chester, Virginia 23831	Shaun Connock 751-0625 697-5706 Pager
Building Fascade (Sec. 04530)	Empire Granite Corporation P. O. Box 5221 Richmond, Virginia 23220	Stephen Broocks Fax: 644-5810
Masonry	Gibbs Masonry & Construction P. O. Box 834 Colonial Heights, Va. 23834	Lewis Gibbs 731-6505 (Mobile) 520-7525
Wall Ties - Equipment	Helifix Ltd. 30 Millwick Drive Weston, Ontario, Canada M9L 1Y3	Nella Sales 1-800-561-3026 Fax: 416/ 749-1017
Louvers (Section 10200)	K/1 Air Distribution Products 4114 East Parham Road, Suite C Richmond, Virginia 23228	M. L. Nooney 755-4300 Fax: 755-4303
Anchor Ties	Shade & Wise, Inc. P. O. Box 11212 Richmond, Virginia 23230	Jay Frazer 355-2886 Fax: 359-3424
Brick Demo/Disposal (Sec. 02080) Ceiling Mastic	Special Renovations, Inc. P. O. Box 1508 Chesterfield, Virginia 23832	Keith Cronan 763-2829 Fax: 763-2924
Rent - 324' Temp. Chain Link w/blocks-1yr. (Install & Remove)	Wallace Fences, Inc. 500 DuPuy Avenue Richmond, Virginia 23834	Scott Wray 285-8437 Fax: 520-0745

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND
John Marshall Courts BuildingLISA C. PECK, Administratrix of
The Estate of William R. Peck, Jr.,
Deceased,

Plaintiff,

v.

SAFWAY STEEL PRODUCTS, INC.

and

HEK PLATFORMS & HOISTS, INC.

Defendants.

Case No: LF-2314-4

RECEIVED & FILED
CIRCUIT COURT

MAY 25 2000

BEVILL M. DEAN, CLERK
By..... D.C.**SAFWAY STEEL PRODUCTS, INC.'S
RESPONSES TO PLAINTIFF'S REQUESTS
FOR ADMISSIONS AND INTERROGATORY**

COMES NOW the Defendant, Safway Steel Products, Inc., by counsel, and for its Responses to Plaintiff's Requests for Admissions states as follows:

1. Admit that Safway provided all materials for the scaffolding on the Sanger Hall construction project.

RESPONSE: Admitted in part and denied in part. Safway Steel Products, Inc. admits it provided all materials for the scaffolding it furnished under its subcontract with White Construction Company, Inc. including all change orders thereto. Upon information and belief, however, other individuals or entities over whom Safway exercised no control and had no duty to control may have incorporated materials provided by a source or sources other than Safway into the scaffolding. Therefore, Safway denies it provided all materials for the scaffolding on the Sanger Hall construction project.

2. Admit that Safway provided all labor to erect, modify and dismantle the scaffolding on the Sanger Hall construction project.

RESPONSE: Admitted in part and denied in part. Safway Steel Products, Inc. admits it provided, pursuant to its subcontract with White Construction Company, Inc. including all change orders

thereto, all labor for the initial erection and ultimate dismantling of the scaffolding on the Sanger Hall construction project. Safway admits further it provided, pursuant to its subcontract with White Construction Company, Inc. including all change orders thereto, all labor for deck moves and other modifications called for by the subcontract and change orders. Upon information and belief, however, other individuals or entities over whom Safway exercised no control and had no duty to control may have erected, modified or dismantled certain portions of the scaffolding. Therefore, Safway denies it provided all labor to erect, modify and dismantle the scaffolding on the Sanger Hall construction project.

3. Admit that Safway Scaffolding provided all supervision for the erection, modification and dismantling of the scaffolding at the Sanger Hall construction project.

RESPONSE: Safway Steel Products, Inc. objects to this request as the word "supervision" is not defined and is ambiguous. Without waiving or limiting its objection, and as Safway understands such term, Safway responds as follows: Admitted in part and denied in part. Safway admits it supervised its employees during the initial erection and ultimate dismantling of the scaffolding on the Sanger Hall construction project. Safway admits further it supervised its employees during all deck moves and other modifications called for by its subcontract with White Construction Company, Inc. including any change orders thereto. Upon information and belief, however, other individuals or entities over whom Safway exercised no control and had no duty to control may have erected, modified or dismantled certain portions of the scaffolding. Additionally, White Construction Company, Inc., through its employees, directed Safway with respect to the timing and location of deck moves. Therefore, Safway denies it provided all supervision for the erection, modification and dismantling of the scaffolding on the Sanger Hall construction project.

4. Admit that no White Construction Co. employees assisted the Safway employees in the erection, modification and dismantling of the scaffolding.

RESPONSE: Safway Steel Products, Inc. objects to this request as the word "assisted" is not defined and is ambiguous. Without waiving or limiting its objection, and as Safway understands such term, Safway responds as follows: Admitted in part and denied in part. Safway admits that where, pursuant to its subcontract with White Construction Company, Inc. including all change orders thereto, it erected, modified or dismantled the scaffolding on the Sanger Hall construction project, it did so through its own employees without the physical assistance of any employees of White Construction Company. To the extent this request contemplates any assistance other than physical assistance, this request is denied.

5. Admit that no White Construction Co. employees supervised the Safway personnel in your erection, modification and dismantling of the scaffolding.

RESPONSE: Safway Steel Products, Inc. objects to this request as the word "supervised" is not defined and is ambiguous. Without waiving or limiting its objection, and as Safway understands such term, Safway responds as follows: Admitted in part and denied in part. Safway admits that no White Construction Company employees supervised Safway personnel during the initial erection or ultimate dismantling of the scaffolding. Safway states that White Construction Company, Inc., through its employees, directed Safway with respect to the timing and location of deck moves and, therefore, Safway denies this request as to modifications of the scaffold.

6. Admit that Safway was responsible for the design and erection of the scaffolding at the Sanger Hall construction project.

RESPONSE: Admitted in part and denied in part. Safway Steel Products, Inc. admits that, pursuant to its subcontract with White Construction Company, Inc. including all change orders thereto, it was responsible for the initial erection of the scaffolding at the Sanger Hall construction project. Safway denies it was solely responsible for the design of the scaffolding at the Sanger Hall construction project. Safway provided the initial design of the scaffolding and submitted it to White Construction Company, Inc. White Construction Company, Inc. then submitted it to the owner or the owner's representative for modification and approval prior to erection. Modifications to the scaffolding were made subsequent to its erection at the request of White Construction Company which were not part of the original scaffolding design and were not designed by Safway. Additionally, upon information and belief, other individuals or entities over whom Safway exercised no control and had no right to control may have erected, modified or dismantled certain portions of the scaffolding. Safway denies responsibility for the design of any erection, modification or dismantling done by any third party.

7. Admit that when Safway initially installed the scaffolding on the Sanger Hall construction project there were no White Construction personnel present.

RESPONSE: Denied. A number of White Construction personnel were present at various times during the initial installation of the scaffolding on the Sanger Hall construction project.

8. Admit that when Safway performed additional work on the scaffolding, that no White Construction Co. personnel were in the area where Safway was performing the scaffolding work.

RESPONSE: Denied. When Safway performed work on the scaffolding, White Construction Company personnel were almost always on the job site.

9. Admit that no Safway employees participated in any of the work as specified in White Construction Company's Base Bid contained in Exhibit 4 to Safway's Requests for Admissions, and which constituted the work performed by White Construction Company on the Sanger Hall project.

RESPONSE: Denied. The work specified in Exhibit 4 does not constitute the entire scope of work performed by White Construction Company on the Sanger Hall construction project.

10. Admit that the original contract between White Construction Co. and Safway was for a time period of January 24, 1998 until September 24, 1998.

RESPONSE: Denied. The subcontract between White Construction Company, Inc. and Safway Steel Products, Inc. spanned different dates.

11. Admit that at the time of the accident involving the Plaintiff's decedent, White Construction Co. and Safway were operating under Revised Contract 285-4, Change Order #1, which provided for additional scaffold rental per Exhibit 12 to Defendant's Request for Admissions.

RESPONSE: Denied. At the time of the accident Safway Steel Products, Inc. was operating under its subcontract with White Construction Company, Inc. as amended by any approved change orders.

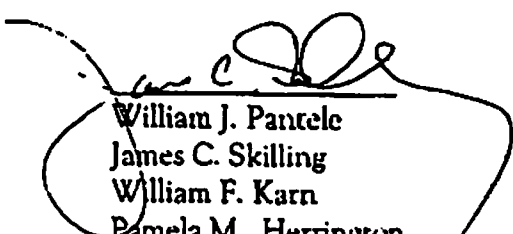
INTERROGATORY

1. If you cannot admit completely Request for Admission No. 1 through 11 above, please state every fact upon which you base such denial and state the name, address and phone number of any person(s) who will render such opinion.

ANSWER: The basis for each denial is stated above in the response to each request.

SAFWAY STEEL PRODUCTS, INC.

By Counsel



William J. Pantele

James C. Skilling

William F. Karn

Pamela M. Herrington

BUTLER, WILLIAMS, PANTELE & SKILLING, P.C.

1309 E. Cary Street, 2nd Floor

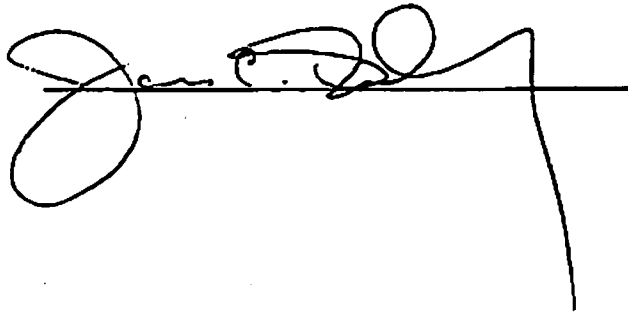
Richmond, Virginia 23219

Telephone: (804) 648-4848

Facsimile: (804) 648-6814

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of May, 2000, ^{faxed and} mailed a copy of the foregoing Safway Steel Products, Inc.'s Responses to Plaintiff's Requests for Admissions and Interrogatory to William B. Kilduff, Esquire, EMROCH & KILDUFF, LLP, 3600 West Broad Street, Suite 700, P. O. Box 6856, Richmond, VA 23230-0856 and L. Bradford Haskin, Esquire, First Union Bank Building, 500 East Plume Street, Suite 400, Norfolk, VA 23510 counsel for the plaintiff, and to John H. Carstens, Esquire, JORDAN, COYNE & SAVITS, L.L.P., 10486 Armstrong Street, Fairfax, VA 22030, counsel for HEK Platforms & Hoists, Inc.



(Cite as: 176 F.Supp. 101)

Henry Lee GARRETT

v.

TUBULAR PRODUCTS, INCORPORATED and Frank Jett.

Civ. A. No. 2632.

United States District Court E.D. Virginia,

Richmond Division.

July 30, 1959.

Action by helper on crane on theory of negligence against corporation which supplied steel columns to primary contractor, and against corporation's employee for injuries sustained when corporation's employee, at direction of crane operator, moved truck load of columns into position for unloading by crane. The corporation and its employee moved for summary judgment on theory that corporation was subcontractor. that therefore it and its employee were not 'other parties' within workmen's compensation provision relating to subrogation of employer to employee's right against 'other party,' and that helper's remedy was solely under Virginia Workmen's Compensation Act. The District Court, Sterling Hutcheson, Chief Judge, held that corporation was supplier, not subcontractor, notwithstanding facts that corporation had fabricated the steel and that contract referred to corporation as

(Cite as: 176 F.Supp. 101)

subcontractor, that corporation and its employee were 'other parties' within the provision and that the action could be maintained.

Motion overruled.

(Cite as: 176 F.Supp. 101)

Garrett v. Tubular Products, Incorporated

[1] KeyCite this headnote

343 SALES

343II Construction of Contract

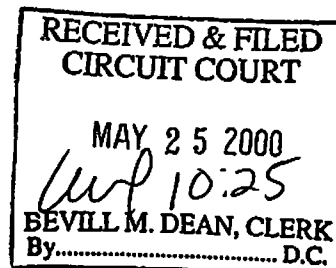
343k83 k. Mode of delivery.

D.C.Va. 1959.

Phrase delivery "f.o.b." trucks means that purchaser is charged with responsibility of unloading materials so delivered.

See publication Words and Phrases for other judicial constructions and definitions.

(Cite as: 176 F.Supp. 101)



Garrett v. Tubular Products, Incorporated

[2] KeyCite this headnote

413 WORKERS' COMPENSATION

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)1 Right of Action of Employee or Representative Generally

413k2160 What Persons Liable as Third Persons

413k2161 k. In general.

D.C.Va. 1959.

Where corporation had agreed to furnish and deliver steel columns f.o.b. trucks to primary contractor's building site but had not agreed to erect the columns, corporation was supplier, not subcontractor, and where helper on crane, which had been furnished to a subcontractor which had agreed to erect the columns, was injured when corporation's employee, at direction of crane operator, moved truckload of columns into position for unloading, corporation and employee were other parties within provision of Virginia Workmen's Compensation Act relating to subrogation of employer to employee's rights against "other party", and helper could maintain action against corporation and employee on theory of

(Cite as: 176 F.Supp. 101)

negligence. Code Va.1950, § 65-38.

See publication Words and Phrases for other judicial constructions and definitions.

(Cite as: 176 F.Supp. 101)

Garrett v. Tubular Products, Incorporated

[2] KeyCite this headnote

413 WORKERS' COMPENSATION

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)3 Right of Employer or Insurer to Remedy of Employee or Employee's Representative

413k2189 k. Subrogation or assignment in general.

D.C.Va. 1959.

Where corporation had agreed to furnish and deliver steel columns f.o.b. trucks to primary contractor's building site but had not agreed to erect the columns, corporation was supplier, not subcontractor, and where helper on crane, which had been furnished to a subcontractor which had agreed to erect the columns,

was injured when corporation's employee, at direction of crane operator, moved truckload of columns into position for unloading, corporation and employee were other parties within provision of Virginia Workmen's Compensation Act relating to subrogation of employer to employee's rights against "other party", and helper could maintain action against corporation and employee on theory of

(Cite as: 176 F.Supp. 101)

negligence. Code Va.1950, § 65-38.

See publication Words and Phrases for other judicial constructions and definitions.

(Cite as: 176 F.Supp. 101)

*102

(Cite as: 176 F.Supp. 101, *102)

Tuck & Somma, Richmond, Va., for plaintiff.

Denny, Valentine & Davenport, Richmond, Va., for defendants.

STERLING HUTCHESON, Chief Judge.

The essential facts with which we are concerned are as follows.

In 1955, Doyle and Russell, of Richmond, Virginia, a general contractor engaged in the construction business, entered into a contract with the Mutual Assurance Society of Virginia to erect a parking garage on land owned by the Society at the northeast corner of 9th and Cary Streets in the City of Richmond. Under its contract with the Society, Doyle and Russell agreed to furnish all materials and labor required for the job. As is customary in such operations, Doyle and Russell also entered into agreements with various subcontractors to perform specified portions of the work. Among the subcontractors was Liphart Steel Company of Richmond, which company contracted to erect the steel in the parking facility. That contract recited that Doyle and Russell had an agreement with Tubular Products of Souderton, Pennsylvania, to furnish and deliver f.o.b. trucks to the building site certain columns constructed of tubular steel, to be used in connection with the Liphart operations. Liphart, in turn, contracted with Moore Crane Service of Richmond for Moore to provide a crane and crew to unload the steel pipe columns which

(Cite as: 176 F.Supp. 101, *102)

were to be delivered by Tubular f.o.b. truck at the site. The plaintiff to this action, Garrett, was employed as a helper on the crane furnished by Moore to Liphart for the purpose of unloading the steel.

Doyle and Russell, the general contractor, also entered into an agreement with Tubular, bearing date of July 26, 1955, under which agreement or contract Tubular agreed to 'furnish all the materials and perform all the work mentioned in

the specifications and shown on the drawings prepared by the architects', and deliver f.o.b. trucks to the building *103

(Cite as: 176 F.Supp. 101, *103)

site. In that contract Tubular is referred to as the subcontractor and it agreed to prepare shop drawings for the material and to make deliveries at specified times. It was further provided that a sufficient number of trucks would be used in delivering the columns so as to permit uninterrupted unloading by the cranes. It was further recited that Doyle and Russell, as contractor, had sublet to another subcontractor the erection of the columns. In the contract between Doyle and Russell and Tubular it was specifically provided that erection of the columns was not included.

It will thus be seen from this and other provisions in the contract that the material was fabricated by Tubular in accordance with the specifications of the architects and there were a number of formal provisions concerning compliance in that regard.

On October 6, 1955, in accordance with the contract, Tubular delivered to the
(Cite as: 176 F.Supp. 101, *103)

job site a truck load of material on a tractor-trailer operated by the defendant, Frank Jett. After the arrival of the material the crane supplied by Moore and operated by the crew, including the plaintiff Garrett, prepared to unload the material from the trailer. Jett, the employee of Tubular, was directed by the operator of the crane, to place the trailer in position for unloading. In this movement the plaintiff Garrett was injured.

This is an action brought by Garrett against Tubular and Jett to recover damages for the injuries so sustained. A motion for summary judgment has been filed by the defendants, in which it is contended that the plaintiff's remedy is solely under the Workmen's Compensation Act of Virginia and no common law action can be maintained by him against the defendants. The defendants contend that they are not the 'other party' within in the meaning of Section 65-38 of the Virginia Workmen's Compensation Act, Code 1950, and that at the time of the injuries both Jett, the employee of Tubular, and the plaintiff were under the direction and control of Liphart and were 'fellow employees'.

From an examination of decided cases it is clear that the issue turns upon the status of Tubular; that is, whether Tubular is a subcontractor of Doyle and Russell, or the supplier of material. If Tubular is a subcontractor, the plaintiff is limited in his recovery to the Workmen's Compensation Act. If Tubular is a mere supplier of materials, the defendants are 'other party' within the purview of the statutes.

(Cite as: 176 F.Supp. 101, *103)

The defendants point to the language of the contract between Doyle and Russell and Tubular, in which the latter is designated as a subcontractor; to the manner of delivery; fixing of delivery dates and the requirement that a sufficient

number of trucks would be used to permit uninterrupted loading; the submission of work drawings and samples of materials to the contractor for approval; rights of the contractor should the subcontractor fail to comply; provisions concerning overtime work; the extension of the completion date; the agreement to indemnify the contractor for damages caused by the subcontractor; the prohibition against sub-letting without the consent of the contractor; the right of the contractor to visit the place of business of the subcontractor so as to inform the general contractor of conditions and progress of the work; the arbitration of disputes and the agreement of the subcontractor to take out Workmen's Compensation and Public Liability Insurance and the payment by the subcontractor of Social Security, unemployment and other taxes. When examined and analyzed in the light of the facts of this case, it is apparent that these various provisions of the contract have little bearing upon the issue before the Court. The contract is on a printed form and it is obvious that it contains formal provisions designed to cover the obligations of the parties when applicable. The greater number of these formal provisions bear no relation to the obligation assumed by Tubular and are surplusage.

[1] It is clear that Tubular merely agreed to furnish f.o.b. to the job site

(Cite as: 176 F.Supp. 101, *103)

certain fabricated steel. The contract *104

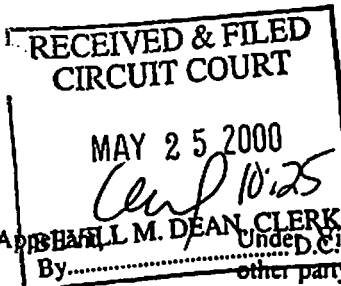
(Cite as: 176 F.Supp. 101, *104)

specifically provided that the erection of that steel on the job site was not included in the contract. As is commonly known, delivery f.o.b. trucks means that the purchaser is charged with the responsibility of unloading materials so delivered. That this was the intention of the parties is demonstrated by the agreement between Doyle and Russell and Tubular in which it is recited that the columns were to be delivered f.o.b. truck at the site and erection of the columns so delivered was not included. It is also shown by the agreement between Doyle and Russell and Liphart, in which it is recited that the contractor had an agreement with Tubular to furnish and deliver f.o.b. trucks to the building site the columns to be used in the construction. This was recognized by Liphart when it entered into a contract with Moore to provide a crane and crew to unload the columns from the trucks. Tubular occupied precisely the same position as would a supplier of brick or cement, who made a sale to a contractor, whether a general contractor or a subcontractor. The fact that the steel was fabricated by Tubular is of no importance. There might well be a situation in which a brick manufacturer contracted to furnish certain special type of brick, such as is often used in the restoration of ancient buildings. Of course, the purchaser would be entitled to examine samples and if desirable to visit the premises where the manufacture was taking place. The dates of delivery and the method of delivery are commonly a part of the order. A written contract between the

(Cite as: 176 F.Supp. 101, *104)

parties referring to the supplier of the material as a subcontractor does not make him a subcontractor.

[2] It is my conclusion that under the facts of this case it is clear that Tubular was the seller of material and not a subcontractor; and it and its employe and co-defendant, Jett, are 'other parties' within contemplation of Section 65-38, Code of Virginia. It is equally clear that under the Virginia cases the defendants. Tubular and Jett, as such 'other parties', are liable for the negligence of Jett. *Perkinson v. Thomas*, 158 Va. 699, 164 S.E. 561; *Feitig v. Chalkley*, 185 Va. 96, 38 S.E.2d 73; *Sykes v. Stone & Webster Engineering Corp.*, 186 Va. 116, 41 S.E.2d 469; *Rea v. Ford*, 198 Va. 712, 96 S.E.2d 92; *Kramer v. Kramer*, 199 Va. 409, 100 S.E.2d 37; *Sears, Roebuck & Co. v. Wallace*, 4 Cir., 172 F.2d 802. See also the well considered opinion of Judge Rives in *Anderson v. Thorington Construction Company, Incorporated* (Law and Equity Court of the City of Richmond, 1959), in which the authorities are carefully analyzed. An order overruling the motion for summary judgment will be entered upon presentation.



John William BRISTOW, Plaintiff, Appellant,
v.
SAFWAY STEEL PRODUCTS, v/a Safway Steel
Scaffolds, Virginia Division of Safway
Steel Products, Incorporated, Defendant and Third-
Party Plaintiff, Appellee, v.
ROBERT M. DUNVILLE AND BROS.,
INCORPORATED, Third-Party Defendant,
Appellee.

No. 9020.

United States Court of Appeals Fourth Circuit.

Argued Sept. 30, 1963.

Decided Jan. 14, 1964.

Action against a scaffolding supplier to recover for injuries sustained by plaintiff when scaffolding leased to plaintiff's employer turned over. The United States District Court for the Eastern District of Virginia, at Richmond, John D. Butzner, Jr., J., entered judgment for supplier on theory it was a subcontractor, and that plaintiff's exclusive remedy was under the Workmen's Compensation Act, and plaintiff appealed. The Court of Appeals, Albert V. Bryan, Circuit Judge, held that under Virginia law supplier was an 'other party' not engaged in execution or performance of and not employed in the work embraced within the contract between owner and contractor, and fact supplier leased to contractor the scaffolding which remained property of supplier did not convert supplier into a participant in the work, and therefore contractor's employee although claiming compensation benefits could maintain an action for negligence against supplier.

Reversed and remanded.

[1] WORKERS' COMPENSATION ⇨ 2161

413k2161

Under Virginia law, "any other party" against whom an employee has a right of action at common law is one not required to pay or not entitled to receive compensation under the Act. Code Va. §§0, 65-20, 65-27, 65-37, 65-38.
See publication Words and Phrases for other judicial constructions and definitions.

[2] WORKERS' COMPENSATION ⇨ 2163

413k2163

Under Virginia law scaffolding supplier was "any other party" not engaged in execution or performance of and not employed in the work embraced within the contract between owner and contractor, and fact supplier leased to contractor the scaffolding which remained property of supplier did not convert supplier into a participant in the work, and therefore contractor's employee although claiming compensation benefits could maintain an action for negligence against supplier. Code Va. §§50, 65-20, 65-27, 65-37, 65-38.

[3] WORKERS' COMPENSATION ⇨ 2161
413k2161

Under Virginia law, mere fact that a contractor might have had a contractual obligation to reimburse a scaffolding supplier for damages recovered from supplier by an employee of contractor, did not destroy employee's remedy at common law against supplier despite contractor's payment of workmen's compensation. Code Va.19 §§ 65-20, 65-27, 65-37, 65-38.

*608 William P. Hanson, Richmond, Va., for appellant (Hanson & Hanson, Richmond, Va., on brief).

Jack B. Russell, Richmond, Va., for appellee, Safway Steel Products, etc.

James C. Roberts and Ernest G. Garrett, Jr., Richmond, Va., for appellee, Robert M. Dunville and Bros., Inc. (Browder, Russell & Morris, Tucker, Mays, Moore & Reed, and May, Garrett, Miller, Newman & Compton, Richmond, Va., on brief).

Before SOBELOFF, Chief Judge, BRYAN, Circuit Judge, and THOMSEN, District Judge.

ALBERT V. BRYAN, Circuit Judge:

The Workmen's Compensation Act of Virginia, on acceptance of its provision: *609 denies an injured employee the right to recover damages which he may have 'against any other party' unless the latter is one not 'employed in the work' in which the employer of the injured employee is engaged. [FN1] See Doane v. E. I. Du Pont De Nemours & Co., 209 F.2d 921 (4 Cir. 1954). The question presently is whether John William Bristow, an employee of Robert M. Dunville and Bros., Incorporated, is foreclosed by the Act from recovering o Safwa' Steel Products for injuries sustained, assertedly due to Safway's negligence.

Holding that the Act barred Bristow's action against Safway, because Safway was a subcontractor engaged in the work of Dunville as a general contractor, the District Court granted defendants' motion for summary judgment. This finding, we conclude on this appeal of Bristow, was error. The facts, uncontested, demonstrate that Safway was an 'other party' under the Act and a 'stranger' to the work of Bristow's employer, so not immune from direct liability to Bristow.

Dunville contracted with Richmond Food Stores, Incorporated for the installation of a refrigeration system. The agreement required Dunville to furnish all the necessary materials and labor for the job. As it had no scaffolding of its own, Dunville arranged to rent the staging from Safway, and in calculating its bid for the Richmond Food construction, Dunville included the rental cost. The formal lease between Safway and Dunville did not require Safway to do anything more than deliver the unassembled scaffolding to Dunville at the construction site. Accordingly, the equipment was placed at the Richmond Food plant by Safway, but no employee of Safway remained there or had anything to do with the erection of the scaffold. It was put up by Dunville employees exclusively.

While working on this scaffold as an employee of Dunville, Bristow was injured when it turned over. He brought suit against Safway upon the allegation that the scaffolding was defective and not suited for its intended purpose. Safway impleaded Dunville in the case to enforce a covenant of the lease that Dunville would save Safway harmless from any claim arising from the 'erection and maintenance, use or possession' of the scaffold.

An employee is presumed to have accepted the Workmen's Compensation Act, [FN2] and an application for its benefits will 'exclude all other rights and remedies of such employee * * * at common law or otherwise, on account of such injury * * *.' [FN3] Bristow actually received compensation payments from Dunville. Acceptance of the Act 'shall operate as an assignment to the employer of any right to recover damages which the injured employee * * * may have against any other party for such injury * * *.' [FN4] The action may be brought in the name of the employee, and any excess recovered beyond the compensation and expenses of suit paid by the employer is given the employee.

Primarily, the Act requires that every employer shall pay the stipulated compensation to any of his employees who have suffered injury or death in the course of his employment. [FN5] Additionally, in separate sections [FN6] it provides that when an owner undertakes to perform or execute any work which is a part of his 'trade, business or occupation', he 'shall be liable to pay to any workman employed in the work any compensation under this Act which he would have been liable to pay if the workman had been immediately employed by him'. Moreover, every person contracting to perform or execute any work for another person which is not a part of the trade, business or occupation of such other person, incurs a similar liability. *61 Finally, a like liability is imposed upon every subcontractor of an owner, contractor or other subcontractor.

Thus every contractor and subcontractor, as well as the owner in the circumstances stated, performing or executing any work may become liable for payment of compensation to any workman 'employed in (that) work' upon his injury or death therein. On payment or provision for payment, such contractor, subcontractor or owner is thereby rendered immune to suit by the injured employee for damages. In this way the responsibility of the owner, contractor or subcontractor to an injured worker or other person, as well as the injured party's rights against them or any other person, are measured first by reference to the relation of each to the work-project. The aim of the Act is that the economic burden of all parties arising from personal injuries incident to the undertaking be carried by, and confined to, the project.

[1] From this design of the statute, it has been consistently held that 'any other party'-- against whom the employee has a right of action-- can only be one who is not engaged in the execution or performance of the work. *Doane v. E.I. Du Pont De Nemours & Co.*, supra, 4 Civ., 209 F.2d 921; *Sears, Roebuck & Co. v. Wallace*, 172 F.2d 802 (4 Cir. 1949); *Kramer v. Kramer*, 199 Va. 409, 100 S.E.2d 37, 44 (1957). Put another way, 'any other party' is one not required to pay, or not entitled to receive, compensation under the Act.

This court has recognized and applied Virginia's concept of her Workmen's Compensation Act, saying:

'It is manifest from these holdings (State decisions) that an employee covered by the Act has no right of

action against another party for injuries received while engaged in the business of his employer unless that other party is a stranger to the business. 'The purpose of the Virginia statute as interpreted by its highest court is to limit the recovery of all persons engaged in the business under consideration to compensation under the act, and to deny an injured person the right of recovery against any other person unless he be a stranger to the business.' Judge Soper in *Doane v. E. I. Du Pont De Nemours & Co.*, supra, 209 F.2d 921, 924, 926.

[2] Our judgment, to repeat, is th Safway was an 'other party' not engaged in 'the execution or performance' of, and not 'employed in', the work embraced within the contract between Richmond Food and Dunville. Safway simply gave Dunville permission to use its scaffolding, which remained the property o Safway. This did not conv Safway into a participant in the work. It was the equivalent of renting or selling a tool, such as a hammer, for use by Dunville in its work. In such a transaction neither the lessor nor vendor would be an actor in the execution of the refrigeration contract; neither would be required to provide compensation insurance for the protection of himself or a worker. In this view we do not reach the question, discussed by counsel, and therefore considered by the trial court, of the status of one furnishing materials to the job-site for incorporation in the structure. Compare *Garrett v. Tubular Products, Inc.*, 176 F.Supp. 101 (D.C.E.D.Va.1959).

But appellees Safway and Dunville, to sustain their insistence that Safway was not a stranger to the work, cite us to these Virginia decisions especially: *Rea v. Ford*, 198 Va. 712, 96 S.E.2d 92 (1957); *Williams v. E. T. Gresham Co.*, 201 Va. 457, 111 S.E.2d 498 (1959); *Floyd v. Mitchell*, 203 Va. 269, 123 S.E.2d 369 (1962); *Lucas v. Biller*, 204 Va. 309, 130 S.E.2d 582 (1963). We find nothing in them, opposed to the position we have expressed.

In *Rea v. Ford*, supra, 198 Va. 712, 96 S.E.2d 92, Ford rented his crane with operator and helper to the general contractor to hoist steel trusses into place on the construction job. An employee of the general contractor was kill *61 through the alleged negligence of Ford in furnishing an insecure crane and in its operation. The Act barred recovery at common law for the death, because Ford not only furnished the crane but operated the machine, and was thus occupied in the work of the contractor. The

Court refused to distinguish between the supplying of the crane and its operation.

In *Williams v. E. T. Gresham Co.*, supra, 201 Va. 457, 111 S.E.2d 498, the claimant was held precluded by the Act because he was personally working within the scope of his employer's undertaking, and his injury was inflicted by the defendant subcontractor who was likewise engaged.

Much stock is put b; Safway and Dunville in *Floyd v. Mitchell*, supra, 203 Va. 269, 123 S.E.2d 369. Here the injured plaintiff's employer had contracted for delivery of its product by a trucker. The Court found that such deliveries were necessarily a part of the employer's work. Hence, when he was injured by the trucker during a step in the delivery, the Court said, the plaintiff and the defendant trucker were both within the Act.

Lucas v. Biller, supra, 204 Va. 309, 130 S.E.2d 582, involved a common law damage action by an employee against a co-employee for injuries received as she was driven home from work by the defendant co-employee. Without dispute, it appeared that their common employer had agreed to furnish transportation to the claimant employee and to pay the co-employee for undertaking the transportation. The action was held excluded by the instant statute because the driver was performing the work of the employer.

[3] Whatever the obligation of Dunville Safway under the lease covenant-- and we intimate no view in that regard-- it is not a consideration in the right of Bristow to sue Safway. The mere fact that such a suit may result ultimately in Dunville's payment of damages to Bristow, despite previous payment of compensation, cannot destroy Bristow's remedy at common law. Any such recovery from Bristow's employer would be wholly dependent upon the terms of Dunville's voluntary stipulation, something quite apart from the statute. No agreement between Dunville and Safway, without the assent of Bristow, can expand the Act to encompass Bristow's claim.

Of course, we do not rule upon the merits of Bristow's claim again Safway we only say the claim is not shut out by the Act. The judgment dismissing Bristow's suit must be reversed and the case remanded for trial.

Reversed and remanded.

FN1. Va.Code of 19 §§ 65-20,-27,-37: 65-38
(Supp.1962).

FN2. Va.Code of 1950, § 65-20.

FN3. § 65-37.

FN4. § 65-38 (Supp.1962).

FN5. § 65-20.

FN6. §§ 65-26, -27 and -28.

END OF DOCUMENT

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1
Certified correct with
changes as shown. 8/17/00

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RICHMOND
3 *Randall E. Johnson,*
4 Judge

5 Lisa Peck, Administratrix of the Estate
6 of WILLIAM R. PECK, JR., Deceased,

7 Plaintiff,

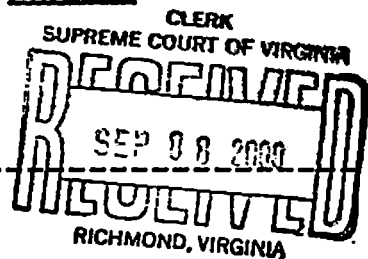
ORIGINAL

8 v.

Case No. _____

9 SAFeway STEEL PRODUCTS, et al.

10 Defendants.



12 HEARING

13 Before: *Randall E. Johnson*
~~Theodore J. Markew~~, Judge

14
15
16 May 30, 2000

17 Richmond, Virginia

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19
20
21 HALASZ REPORTING

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1 **Appearances:**

2 **EMROCH & KILDUFF**

3 By: William B. Kilduff, Esq. and
4 William P. Hanson, Jr., Esq.
5 attorneys, of counsel for the Plaintiff

6 **BUTLER, WILLIAMS, PANTELE & SKILLING**

7 By: James C. Skilling, Esq. and
8 William F. Karn, Esq.
9 attorneys, of counsel for the Defendant

10 (This matter was heard before the
11 Honorable ~~T. J. Markow~~, Judge, Circuit Court for
12 the City of Richmond; commencing at 2:00 p.m., May
13 30, 2000.)

14 *Randall L. Johnson*

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 HALASZ REPORTING

1 THE COURT: We are here on the case of
2 Lisa Peck, Administratrix versus Safeway Steel
3 Products and others. And this is a plea of the
4 workers' compensation, I believe.

5 MR. KARN: That's correct. Your Honor,
6 if we may, we have a few brief witnesses if they
7 could --

8 THE COURT: Any opening statement you
9 want to make before you present evidence?

10 MR. KARN: I think given the time
11 constraints, let's move on to the testimony. It's
12 a fairly straightforward workers' compensation
13 plea.

14 THE COURT: Mr. Kilduff?

15 MR. KILDUFF: No. We will respond.

16 THE COURT: I don't know how many
17 witnesses you have. Is there a motion to exclude?

18 MR. KILDUFF: I don't think there is
19 any need to exclude.

20 THE COURT: Who is your first witness?

21 MR. SKILLING: Mr. Carlson, Your Honor.
22 Marty Carlson.

23

24

25

1 MARTIN R. CARLSON
2 was sworn and testified as follows:
3

4 EXAMINATION

5 BY MR. SKILLING:

6 Q Mr. Carlson, can you state your full
7 name for the court, please?

8 A Martin Raymond Carlson.

9 Q And you're employed by Safeway? *J*

10 A Yes.

11 Q What is your current position?

12 A Branch manager.

13 Q And how long have you been a branch
14 manager?

15 A Branch manager for six years.

16 Q And in March of 1997 were you so
17 employed at Safeway? *J*

18 A Yes.

19 Q And are you familiar with the Sanger
20 Hall project that's the subject of this
21 litigation?

22 A Yes.

23 Q Are you a licensed Virginia contractor?

24 A Yes.

25 Q And can you tell the court, was there a

HALASZ REPORTING

1 contract entered into for this project?

2 A Yes, there was.


3 MR. SKILLING: And let me just hand to
4 you, Judge, in our brief there is a Tab 10 that
5 has the subcontract which, Judge, for the record,
6 I think counsel has stipulated that the filings,
7 that is, the admission and the exhibits, will be
8 part of the plea and bar of record.

9 THE COURT: All right.

10 BY MR. SKILLING:

11 Q And look at that document. Is that
12 the subcontract you executed and signed for this
13 project?

14 A Yes, it is.

15 Q And can you just generally tell the
16 court what was required pursuant to the
17 subcontract, what Safeway did on the project? 

18 A We designed the scaffolding system and
19 basically we furnished the equipment and labor to
20 install the scaffolding on the building.

21 Q And what goes into -- when you say
22 design the scaffolding, do you have an engineer
23 who actually does this?

24 A We have an engineering department that
25 sits down in front of a cast system and designs a

HALASZ REPORTING

1 scaffold system based on the what the contractor
2 asked for, the customer.

3 Q And the scope of the project, my
4 understanding was a 12 story building with a
5 penthouse?

6 A Twelve story building with a penthouse,
7 the brick and things had to be removed, they
8 needed the scaffolding to have access to the wall
9 to remove the brick as well as a stair unit system
10 to get on the scaffolding. So we were basically
11 under contract to go out there and install the
12 scaffolding.

13 Q And what would you say the number of
14 employees for Safeway that were involved during
15 the project, that would have been during the
16 installation, any modifications, the dismantling,
17 the number of employees?

18 A We had roughly on the average of six to
19 eight employees on the job on a continuous basis,
20 as many as 15 during peak man-hour time. Roughly,
21 about 5000 man-hours on the job.

22 Q And can you tell the court how this
23 scaffolding was actually affixed to the building
24 so that it could be used by the other workers to
25 do the work on the brick?

1 A Okay. My scaffold erectors would erect
2 the scaffolding up to required height. During
3 that construction period we would also tie the
4 scaffold structure into the building by means of
5 drill and anchor. We would drill through the
6 brick into the structure of the building and
7 install anchors into the concrete to put in an
8 anchoring system that would hold the scaffolding
9 to the building.

10 Q Okay. And could you tell the court how
11 that anchoring system, once the levels were coming
12 down and removed, how would that be undone so it
13 could be dismantled and removed from the site?

14 A During the dismantle phase of the
15 scaffolding, what we would do is have our scaffold
16 erectors on the structure and we would dismantle
17 the scaffolding and, as we came down, those
18 particular ties would have to be removed and
19 patched by another contractor which would have
20 been, in this case, White Construction, was there
21 with us during the dismantling.

22 Q So they would have to have another
23 either subcontractor or worker there to actually
24 do the patching as it came down?

25 A We had to have a contractor with us so

1 that when we reached a point of dismantle where a
2 tie had to come out, that tie would have to have
3 been patched, the brick work would have to be
4 patched where the tie went through the brick. And
5 so they would have to be with us there at that
6 point, yes.

7 Q Now, the original contract was in the
8 amount of around \$45,000. Did that include not
9 only materials, but also labor?

10 A That is correct.

11 Q And can you tell the court, there is
12 some change orders that talk about a deck move
13 that have been filed with the court. Can you
14 explain to the court what a deck move is? Either
15 a half deck or a full deck move?

16 A A deck would be, basically we would be
17 called out by White Construction to move a deck.
18 That would be, whether a whole deck or a half
19 deck, that's the actual platform that the men walk
20 on. We would have to either move it up or move it
21 down based on White Construction's schedule and
22 what they wanted us to do.

23 Q So when and where the deck moves would
24 occur would be directed by White Construction, the
25 general contractor?

1 A That's correct.

2 Q And there were change orders to the
3 subject contract; is that accurate?

4 A That's correct.

5 Q And that included additional labor
6 performed by Safeway employees only; is that
7 correct?

8 A That is correct.

9 Q And that additional labor was also paid
10 for by White and approved by the owner; is that
11 correct?

12 A That's correct.

13 Q Now, how many hours, man-hours, did you
14 expend, Safeway expend in performance of their
15 work at the job site?

16 A Over a period of approximately 14
17 months was about 5000 man-hours, in excess of
18 5000.

19 Q Okay. And do you know generally what
20 the final, including the change orders, around
21 what the final billing was for the work performed
22 by Safeway?

23 A It was over \$100,000, I believe. I
24 don't recall the total dollars.

25 Q And Safeway would make any

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1 modifications, remove decks as required by White;
2 is that correct?

3 A That's correct.

4 Q Then Safeway went out at the end of the
5 job and dismantled with its own employees as well
6 pursuant to the subcontract; is that correct?

7 A That's correct.

8 MR. SKILLING: Okay. Judge, that's all
9 I have.

10 THE COURT: Mr. Kilduff?

11 EXAMINATION

12 BY MR. KILDUFF:

13 Q The only work that was done by Safeway
14 at this project involved the scaffolding; is that
15 correct?

16 A That is correct.

17 Q You installed it, you moved it and you
18 removed it; is that correct?

19 A That's correct.

20 Q You didn't do any of the brick work,
21 any of the installation, expansion joints,
22 anything of that nature?

23 A Nothing of that nature.

24 Q Okay. In fact, your job was just to
25 put the scaffolding up for White Construction; is

1 that correct?

2 A Yes.

3 Q Safeway supervised its own employees?

4 A Yes.

5 Q And White Construction did not
6 supervise Safeway's employees?

7 A Well, there was directives by White
8 being that they were the general contractor, they
9 supervise our activity on the site.

10 Q But, the direct supervision of the
11 employees of Safeway was by Safeway, correct?

12 A For the placing of scaffolding, yes.
13 Installation of scaffolding.

14 Q And when Safeway was doing the work,
15 White was not, White didn't provide employees to
16 help you put up the scaffolding, it was put up by
17 Safeway; is that correct?

18 A The actually assembly of the
19 scaffolding itself would have been Safeway
20 employees, yes.

21 ~~MR. SKILLING~~ ^{KILDUFF:} Thank you very much.

22 THE COURT: Redirect?

23 ~~MR. KILDUFF~~ ^{SKILLING:} Nothing.

24 THE COURT: You may step down, sir.

25 Mr. Skilling, your next witness?

1 MR. SKILLING: Judge, Randy Powers just
2 briefly.

3
4 JOHNNY L. POWERS
5 was sworn and testified as follows:

6
7 EXAMINATION

8 BY MR. SKILLING:

9 Q Mr. Powers, if you could give your
10 name for the record, sir?

11 A It's Johnny L. Powers.

12 Q And what is your position with White
13 Construction?

14 A Vice president and project manager.

15 Q And were you the project manager for
16 the Sanger Hall project?

17 A Yes. Senior project manager.

18 Q And the subcontract which has been
19 introduced on Tab 10 of our memorandum which, I
20 believe, did I submit that --

21 THE COURT: You stipulate that what is
22 Tab 10 was the subcontract? That's stipulated.

23 MR. KILDUFF: We stipulate that's the
24 agreement.

25 MR. SKILLING: Yes. That's an

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1 agreement. He is not going to stipulate it's a
2 subcontract. That's why I am asking Mr. Powers
3 about the title of the document and its contents.
4 BY MR. SKILLING:

5 Q Mr. Powers, that is, in fact, the
6 document under which Safeway furnished the labor
7 and materials and engineering for the scaffolding
8 system; is that correct?

9 A That's correct.

10 Q Now, can you tell me when White
11 Construction uses a subcontract, this form?

12 A This is like our standard form for any
13 major money expenditures for our project. Major
14 rentals or major subcontracts where we actually
15 have people performing part of the scope of the
16 work.

17 Q So it would be part of the scope of
18 work on the site, these subcontractors were doing
19 that work on the site; is that correct?

20 A Yeah. A standard form for
21 subcontractors or like this one, which is a major
22 money expenditure, it was a lot of money going to
23 an individual.

24 Q Okay. But, you would characterize
25 Safeway as a subcontractor?

1 A No, sir.

2 Q And why do you say that?

3 A Because they did not perform any of the
4 scope of work that was in the plans and specs, the
5 contract documents, which we bid.

6 Q But, the contract, general contract bid
7 was around \$650,000, \$700,000 roughly? Would you
8 agree with that?

9 A I will concede.

10 Q Whatever is on the document in the
11 general contract and bid documents which define
12 the scope of work, there is not a line item for
13 \$45,000 for scaffolding, is there?

14 A That's correct. That's means and
15 methods. That's not part of the project, that's a
16 decision that the contractor makes on how to do
17 the project.

18 Q Correct. But, White is the contractor?

19 A White Construction is the general
20 contractor, correct.

21 Q And so when they bid the job, they were
22 contemplating \$45,000 expense for the scaffolding
23 in order to perform the work?

24 A That was our means and methods; yes,
25 sir.

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1 Q Okay. And were you aware that Safeway
2 employees were, did have to at times clean the
3 brick when there became debris or grease on the
4 brick, that that was part of their function?

5 A Anybody we have on the job, if they
6 throw a drink can, they will have to clean up
7 behind themselves.

8 Q Yes, sir. But, without the
9 scaffolding, White Construction could not have
10 performed the work that's described in the general
11 contract?

12 A See, we actually did. In several
13 instances Safeway did not have their decks in the
14 areas we needed to work. So our means and methods
15 changed. We went to different methods for
16 accessing the work. We used in several instances
17 the same system like window washers use on
18 high-rise. I know you have seen them where you
19 suspend channels out over the roof and you run a
20 motorized platform.

21 Q But, that wasn't Safeway? *J*

22 A That was not Safeway, right. *J*

23 Q Let me just hand to you, just so the
24 Court has some reference, just one of your
25 purchase orders on the project. It's Air Metal

1 Corporation. I just picked it out. It has no
2 significance other than the form. Is that a
3 purchase order that you would use for a, as you
4 said, a lesser amount for a supplier to the
5 project?

6 A Right. This is an item that we sent
7 our people to pick up. This is an off-site
8 fabricator. He make the materials, we send a
9 truck, and manpower will pick it up and bring it
10 back to the job.

11 Q You would also use a purchase order,
12 for instance, if a supplier was just merely
13 dropping off material at the site and left it in
14 your control, you would also use a purchase order;
15 is that correct?

16 A It's possible. I mean, it's not,
17 between these two forms has to cover every
18 situation in which we encounter to do business.
19 And one item is dollar value as one of the things
20 I look at. I normally decide which form to use.
21 And dollar value usually has a little bit to do
22 with, you know, which form we use and the decision
23 and which form to send the individual.

24 Q Okay. And White required Safeway to
25 provide evidence of insurance; is that correct --

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1 A That's correct.

2 Q -- pursuant to the subcontract.

3 Including coverage for workers' compensation for
4 its employees?

5 A That's correct.

6 MR. SKILLING: Your Honor, if I could,
7 I would like to just that one document -- the
8 purchase order is not in the record. I just move
9 that.

10 THE COURT: Any objection?

11 MR. KILDUFF: No.

12 THE COURT: That will be Safe~~way~~ 

13 Exhibit 1.

14 (Whereupon, the aforementioned
15 document was marked as Exhibit No. 1.)

16 MR. SKILLING: That's all I have, Your
17 Honor.

18 THE COURT: Any questions?

19 EXAMINATION

20 BY MR. KILDUFF:

21 Q Just a couple. Mr. Powers, what was
22 the -- can you tell the court what was the nature
23 of the work that was actually being done at Sanger
24 Hall?

25 A To remove and replace defective brick

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1 and install shelf angles for support of the brick
2 and cut in and install expansion joints.

3 Q What was the problem that they were
4 experiencing at Sanger Hall that led to the need
5 for this particular work?

6 A The building was built in the '40s and
7 at that time the engineers didn't understand the
8 need for expansion joints. And, as the exterior
9 brick, this massive wall, the heat, the sunlight
10 would make it expand, the cool nights contract,
11 and bricks were actually popping out of the
12 structure. So we had to give it room to move and
13 some relief.

14 Q All right. And did Safeway perform any
15 of the replacement of bricks or the installation
16 of the expansion joints?

17 A No, sir.

18 Q You mentioned previously that the
19 scaffolding was means and methods and you said
20 other means and methods were used on occasion?

21 A Correct.

22 Q Did another contractor actually -- or
23 did a subcontractor actually use another means and
24 method?

25 A That's correct. Actually two different

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1 contractors used the motorized swinging platform
2 to perform parts of their work.

3 Q Now, did White Construction supervise
4 Safeway employees or was that provided by
5 Safeway?

6 A That was provided by Safeway.

7 MR. KILDUFF: Those are all the
8 questions I have.

9 THE COURT: Any redirect?

10 MR. SKILLING: Nothing further.

11 THE COURT: Thank you. You may step
12 down, sir. Mr. Skilling?

13 MR. SKILLING: Judge, I was wondering
14 if it would assist the court if the court would
15 like to have this testimony transcribed and
16 submitted on the record or --

17 THE COURT: I don't think so. Not yet.
18 Is there any other evidence?

19 MR. SKILLING: No other evidence.

20 THE COURT: Any evidence for the
21 plaintiff?

22 MR. KILDUFF: Only evidence I discussed
23 with defense counsel in our submission to the
24 court is we included deposition, portions of
25 depositions.

1 MR. SKILLING: We will stipulate to
2 anything on the record in the pleadings can be
3 considered on the plea, Judge. That was a
4 deposition excerpt from Mr. Powers.

5 THE COURT: I will tell you I just
6 received this, looks like it was filed on
7 Thursday. But, I just got it today. I haven't
8 had a chance to look at it. You say depositions
9 are in here or reference to depositions?

10 MR. SKILLING: There is actually some
11 pages from Mr. Powers' deposition. Not too much.
12 Probably two pages.

13 THE COURT: Okay. I have it. All
14 right. I take it that completes the presentation
15 of evidence today?

16 MR. SKILLING: That does.

17 THE COURT: Mr. Skilling?

18 MR. SKILLING: Mr. Karn will argue.

19 MR. KARN: Thank you, Your Honor. This
20 is, as you're aware, a workers' compensation plea.
21 And, as I am sure you gleaned from the testimony,
22 this was a job where they had to resurface the
23 exterior of Sanger Hall up at MCV. VCU contracted
24 with White Construction, the general contractor.
25 They in turn reached an agreement with Safeway

1 Steel for the provision of scaffolding to erect,
2 to do certain deck moves and dismantle it.

3 At some point during the job Robbie
4 Peck fell and was killed. His wife as the
5 administratrix of this estate has filed this
6 wrongful death claim. Before moving on to the
7 substance of the argument, I just wanted to
8 revisit the, briefly, the purpose behind the
9 workers' compensation act and that it is a
10 compromise between workers and their employers
11 whereby an employee gets immediate medical
12 attention and wage loss benefits in return for the
13 employer, people involved in the industry, bearing
14 that cost and giving up some certain defenses such
15 as contributory negligence and those things. And
16 in this particular case Mrs. Peck did receive
17 benefits under the workers' compensation act as
18 did her two daughters. And so they have received
19 the benefit of that bargain or that contract.

20 This particular case is a fairly
21 straightforward workers' compensation plea. The
22 idea being that on a particular construction
23 project, anybody involved in the work on that
24 project is under the canopy of the act and not
25 subject to suit. So the question really is what

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1 is Safeway's relationship to White Construction, *J*
2 were they engaged in White Construction's trade,
3 business or occupation or were they merely a
4 stranger to the work. Now, the trade business or
5 occupation of White Construction is defined by
6 their contract with VCU. They contracted to do
7 certain things to Sanger Hall. And the work
8 included not only the physical changes to the
9 exterior of the wall, remove the brick, the
10 replacement of the brick, but also services,
11 equipment, labor in order to accomplish that task
12 which is, I would say, present in every general
13 contract, that you need to do what you need to do
14 to deliver the ^{physical} ~~fine~~ product described in the *J*
15 contract.

16 The issue in this case, there is no
17 question that Safeway performed an essential *J*
18 function or an essential part of what White was
19 obligated to do under its contract with VCU. As
20 they said, it was a means and methods of putting
21 their people and materials in place so they could
22 work over the surface of a 12 to 14 story
23 building. And they couldn't have done that
24 without some means of getting their people up
25 there.

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1 Now, as you know, the Supreme Court has
2 spoken to this issue quite frequently. And there
3 has evolved over a time an exception for material
4 men. And the real issue in this case is Safeway
5 Steel a material man or are they not a stranger to
6 the work. Are they engaged ~~and trained~~ in the *trade,*
7 business and occupation of White Construction.
8 And in fashioning the exception for material man,
9 people who supply materials in essence are
10 discharging or doing an essential part of the
11 general contract because you need materials in
12 order to build a building. Quite similar. But,
13 the Supreme Court said we are going to draw the
14 line at people who merely supply materials.

15 And the plaintiff in their brief and in
16 their argument is trying to focus on the other end
17 of the equation and term what is typically an
18 analysis of is this person excluded from the
19 canopy of the worker compensation act as material
20 man to can they present evidence that they are
21 included. Which is to say, can they point to a
22 particular piece of the final product and say we
23 did that. So, therefore, we have obviously done a
24 portion of the work.

25 And that is the wrong analysis and it's

1 not the way the Supreme Court has addressed these
2 cases in the past.

3 In looking at whether --

4 THE COURT: Is this the first time that
5 somebody has been injured on scaffolding? It
6 seems to me it can't be that unusual. Are there
7 no cases?

8 MR. KARN: No cases involving this type
9 of a situation. The plaintiff cited in their
10 brief --

11 THE COURT: Or from other states?

12 MR. KARN: I am not aware of any
13 authority in other states. Although, I do feel
14 there is authority in Virginia that, while not
15 involving scaffolding, would control this
16 particular situation. When talking about
17 suppliers and material men, the easy ^{case is} ~~cases~~ where
18 they just drop off whatever it is and they say
19 here it is and then they leave, and the court has
20 said very clearly they are strangers to the work.
21 Where it gets to be a little mushy is where they
22 stay on-site and they do certain things. And the
23 analysis in those cases have centered on is what
24 they are doing on the site incidental to delivery
25 or does it transcend delivery.

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1 For instance, there is an often cited
2 case where somebody was delivering Sheetrock. And
3 he was delivering certain numbers of Sheetrock and
4 to individual rooms in an apartment complex. He
5 was injured while he was doing that. And the
6 court said there that that is incidental to
7 delivery. I mean, part of their obligation to
8 deliver these materials was just to put them in
9 certain places. Similarly, in the Yancey
10 decision, that plaintiff cited, involving jersey
11 walls, they had somebody on-site to inspect the
12 material before it was incorporated into the wall.
13 The general contractor would take their crane,
14 they would lift it off the truck, put it on a
15 trailer, somebody from the supplier would look at
16 it and say it's okay it, didn't get damaged in
17 transit, they would lift it up and incorporate it
18 into the building. If there was some damage, they
19 would repair it real quick and then they would do
20 the same thing.

21 The court's found there similarly was
22 what he was doing was incidental to the delivery.
23 He didn't get paid anything extra for hanging
24 around and making sure they were delivering the
25 product that was usable. It was incidental to

1 their obligation as a supplier of the material.
2 In this particular case Safeway not only brought
3 all the component parts of the scaffolding to the
4 site, but they erected it and --


5 THE COURT: Can you really draw that
6 analogy? Is this really a different material?
7 Because this is not something that is put into the
8 project. This is just a means to perform the
9 work. So does that analogy really hold?

10 MR. KARN: Well, I don't think that
11 they are a material man. And this is something
12 that the plaintiff has argued to try to get
13 Safeway out from under the canopy of the act.
14 Because quite clearly they spent 5000 man-hours
15 there, not only erecting the scaffolding, but at
16 different periods over the course of the job.
17 White would say okay, well, we are on level 10 now
18 and we need to be back up on 14 because we need to
19 put in these anchors. So they executed a change
20 order which VCU approved for White, White executed
21 the change order to their agreement with Safeway
22 so they could move the scaffolding work levels
23 back up to a certain level and on down. Because
24 they could only have two work levels at a time.
25 So they were constantly and consistently out there

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1 over the course of the work. When White would say
2 okay, we are done in this area, we need you to
3 move it down so we can work on this next level,
4 and similarly at the end of the job they had to
5 dismantle the scaffolding, remove the actual
6 scaffolding, working side by side with White's
7 people to patch the anchor holes as they went
8 down.

9 That while admittedly it doesn't
10 contribute to -- well, it contributes, but it's
11 not an actual piece that's incorporated into the
12 building, but that's never been the test
13 enunciated by the Supreme Court. It's are you
14 doing part of what the general contractor is
15 obligated to do. And quite clearly they are
16 obligated to provide services and equipment to put
17 them in a position that they can complete the
18 finished product.

19 If you look at the case of *Rea* Ray v. Ford, 
20 involves a plaintiff who worked for a general
21 contractor, the defendant was a company that
22 rented a crane. And they provided a crew for the
23 crane. And the injured employee was standing on a
24 steel truss which was hoisted by the crane and was
25 being moved over to the building. The fastening

1 of that particular trust and the materials into
2 the steel framework was all done by the general
3 contractor's employees. It had nothing -- the
4 crane people did not actually add anything into
5 the building. They were basically there to move
6 things and put it in position so that the general
7 contractor could hinge things into the building
8 and actually do what they needed to do. In that
9 case the court said quite clearly that the
10 operator of the crane company was --

11 THE COURT: But, in that case, I don't
12 know if this helps you or hurt you, but in that
13 case the things, whatever they are, had to be
14 moved, I mean, that's part of the job is moving
15 things from place to place.

16 MR. KARN: As it is in this case.
17 Because what they have here is tremendous amounts
18 of brick that they need to elevate to the 14th
19 story. And this scaffolding had a materials
20 hoist. So the brick mason would put materials on
21 the hoist, get it up to, let's say, the 14th
22 level, put it out on the work levels so that they
23 can actually stand there next to the face of the
24 wall and do what they need to do.

25 So while it, you know, the crane

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1 obviously is done and you can see it happen very
2 quickly, they are picking it up and moving it.
3 But, this is very similar. It takes a little more
4 time obviously. But, as they progress on the job,
5 Safe~~way~~ way was consistently asked to come back and
6 move the deck levels so that they could work on
7 different portions of the wall. And if you look,
8 Your Honor, you may remember a case that you
9 decided involving a --

10 THE COURT: If it was more than a week
11 ago, I probably have forgotten it by now.

12 MR. KARN: I will briefly refresh your
13 recollection. It involved a person who was
14 inspecting the installation of a roof for the
15 purposes of the manufacturers warranty when he was
16 injured. And you analyzed that situation and said
17 is he out there for the benefit of his employer,
18 which is the supplier of the roof, or is he out
19 there for the benefit of the owner of the project
20 or the general contractor. You said well, they
21 could issue a warranty without inspecting the work
22 as it goes. So it is in their best interests to
23 go out there and make sure it's installed right so
24 they don't take on a risk they are not willing to
25 take on.

1 In this case you have something clear
2 on the other end of the spectrum. White would say
3 Safeway, we need you to come back out here and we
4 need a change order for deck moves because we have
5 encountered something we didn't expect. They paid
6 specifically for Safeway's employees to come out
7 and perform that labor clearly for the benefit of
8 White, clearly for the benefit of VCU. Those
9 monies charged by Safeway was incorporated into a
10 change order that was passed through to VCU that
11 they paid. Clearly that was not for the benefit
12 of Safeway Steel. It was not incidental of their
13 delivery of equipment because they had already
14 delivered the equipment. Clearly this
15 contemplated a delivery piece where they gave them
16 the equipment and a portion of it, of course, were
17 charges for the use of that equipment. But, there
18 is a major part of this relationship on this
19 particular job which was Safeway's labor and
20 expertise in moving a very complex structure
21 around over time. And they were paid a lot of
22 money to do that. Specifically, for that
23 function. It benefited White directly and it
24 benefited VCU indirectly and it's recognized in
25 their change order and in their contract in the

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1 way that the money was paid. So clearly under the
2 analysis you use in the Scott case, with the
3 warranty, if you look at really what is Safeway
4 doing out there, is it incidental to their
5 obligation to deliver scaffolding, it is not.
6 Because the parties have clearly contracted for
7 them to do more than just deliver scaffolding.
8 They said we need you out here continually, we
9 need you on-call, we need you to come out here and
10 move this stuff around because we think this is
11 the best way there is to accomplish that. We
12 don't want to use the window washers' rig for the
13 entire 14 stories. We don't want to put a mason
14 with a bucket on the end of a crane and dangle him
15 out there. The most efficient way is scaffold and
16 this is how we are choosing to do that and we need
17 you out here consistently throughout the entire
18 job and we will pay you specifically for your
19 labor on this job.

20 So to suggest that a company could be
21 on a project for 5000 hours and say they were a
22 stranger to that project, to that work, really it
23 sort of belies common sense. When you look at the
24 big picture of what the workers' compensation act
25 is trying to do with these construction projects,

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1 they want people who are out there on a regular
2 basis doing the work to be under the canopy. But,
3 somebody who might just come by incidentally and
4 drop off materials or equipment and then leave,
5 and their only connection to the job is the actual
6 provision of the equipment, the Supreme Court has
7 said we are going to carve out that narrow
8 exception. Recognizing that materials and
9 equipment are an essential part of what the
10 general contractor contracted to do, we are going
11 to carve out that piece. The Supreme Court has
12 never extended it beyond that limited exception.
13 They have never required a potential defendant to
14 have to point to a spot on the wall of Sanger Hall
15 and say I put in that brick, I did this. It's
16 enough that they did a part of what White was
17 responsible to do. And very clearly a large chunk
18 of the money that White charged VCU was
19 specifically geared toward the scaffolding
20 subcontract and incorporated therein. Same thing
21 with the change orders.

22 And I think it's very clear that this
23 particular case is one where they were no stranger
24 to the work. They were intimately involved in the
25 construction project as a whole which is what the

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1 cases say that the court needs to look at. And if
2 you look beyond that, the contracts that the
3 parties have signed, I don't know if you have had
4 a chance to look at them, they echo that reality
5 with very specific language that says if you
6 provide ^{on site} ~~outside~~ labor and do certain things,
7 you're a subcontractor. If you merely drop off
8 supplies or material, but don't do any ^{on site} ~~outside~~
9 labor, then you're a supplier. And those
10 definitions are in the contract. Clearly Safeway
11 meets the definition of a subcontractor.
12 Consequently, White had them sign a subcontract,
13 had them provide the insurance, had them do the
14 things subcontractors do on these jobs rather than
15 just do a purchase order and say drop off the
16 scaffolding and be done with it.

17 So I think if you look at the contracts
18 and the way the parties sort of look at this
19 situation, then you look at the cases, there is
20 really only one conclusion, and that is they were
21 engaged in White Construction's trade, business
22 and occupation.

23 THE COURT: Thank you very much. Mr.
24 Hanson?

25 MR. HANSON: Your Honor, the law in

1 Virginia is clear that what the parties call
2 themselves in regards to a relationship is of very
3 little import. That comes from Richmond
4 Newspapers vs. Gill. The fact that they call
5 themselves subcontractors, independent
6 contractors, does not make them so. In a case
7 addressed by the federal courts, Garrett vs.
8 ^{Tubular} ~~Tubler~~ Products, they had a contract and documents
9 that were equally as extensive as in this case
10 calling each other subcontractors. And that court
11 held that the fact that they called themselves
12 subcontractors didn't make them one.

13 That case also goes to the defendant's
14 other argument, is the fact that the people that
15 are there continuously has something to do with
16 whether or not they become someone who is doing
17 the work of the general contractor. It has been
18 admitted that the work of the general contractor
19 was refinishing the surface of the wall. It also
20 is undisputed in the evidence before the court
21 that the employees of Safeway did none of that
22 actual work, refinishing of the wall. In Garrett
23 vs. ^{Tubular} ~~Tubler~~ Products, the contract --

24 THE COURT: That doesn't make any
25 difference either, though, does it?

1 MR. HANSON: I'm sorry?

2 THE COURT: That doesn't make any
3 difference either, does it? I mean, the general
4 contractor can agree, can enter into a contract
5 with the owner to paint a house. And then the
6 general contractor hires somebody else and
7 somebody else's workers to do it.

8 MR. HANSON: To paint the house, that's
9 correct. In this situation we don't have Safeway
10 painting the house. We have Safeway basically
11 providing ladders just as if those painters had
12 gone to Aarow Rental and ordered a --

13 THE COURT: That was the analogy I was
14 getting ready to use. This is basically providing
15 a ladder?

16 MR. HANSON: And, Your Honor,
17 something -- I think there was a little confusion.

18 THE COURT: Let me ask this question.
19 Isn't this basically providing a ladder?

20 MR. HANSON: That's absolutely correct.

21 THE COURT: If White Construction had
22 the painters, because that's what they had, they
23 had the people who were replacing the brick, so
24 they have the painters, and they hire Safeway to
25 come and put up the ladders, and every time the

1 painters' arm reached that point where they
2 couldn't go any further, Safeway, he gets down off
3 the ladder, Safeway employees come and get the
4 ladder and move it to the next point, you wouldn't
5 say they were engaged in the trade, business and
6 occupation of the painters?

7 MR. HANSON: Your Honor, a number of
8 cases have addressed something extremely analogous
9 to what you're talking about. Let me go back and
10 start again. In the federal courts, in
11 interpreting Virginia law, the Eastern District
12 has ruled on whether or not this very same
13 defendant is, in Bristow vs. Safeway Steel
14 Products, 327 Fed --

15 THE COURT: Is that in your submission?

16 MR. HANSON: That's in my submission.
17 Because what they said is exactly what you said,
18 is the scaffolding is merely a tool, that it's
19 just like renting a hammer. And that it's -- the
20 act of the lessee or vendor does not make an actor
21 in evaluation of the contract.

22 THE COURT: What's the case?

23 MR. HANSON: Bristow vs. Safeway Steel.

24 THE COURT: Which page of your
25 submission? Unfortunately, the Supreme Court has

1 taken care of this, the Supreme Court has told
2 you, effective on July 1, that you need to get
3 these briefs to the court much earlier in than
4 you're in the habit of doing.

5 MR. HANSON: That's on page 10, Your
6 Honor. So, basically, a court in examining
7 Virginia law has determined that the rental of a
8 tool that remains on the property of the rentor,
9 is removed at the conclusion of that, is just
10 that. And they go on to say, and we go on to say
11 at the bottom paragraph of --

12 THE COURT: I am very interested in
13 this case. Because if it is the same factual
14 decision, factual situation, even though this
15 court is not bound by the federal court, the court
16 does not like to reinvent the wheel. In this
17 case, in the Bristow case, was Safeway also
18 responsible for moving the scaffolding and --

19 MR. HANSON: They were not, Your Honor.

20 THE COURT: Does it make a difference?

21 MR. HANSON: It does not, Your Honor.

22 Because --

23 THE COURT: Because it seems to me
24 that, going back to the analogy about the painter
25 and the ladders, if the painter goes to Aarrow

1 Rental and just rents ladders and gets up and down
2 the ladder and moves the ladder himself or
3 herself, that's a different situation than having
4 Aarow Rental bring the ladder to the site and
5 having an Aarow employee move the ladder from
6 place to place. Or is that a real distinction?

7 MR. HANSON: It is not a real
8 distinction, Your Honor. And the case of Yancey
9 vs. versus JTE Constructors, Inc., 252 Virginia
10 42.

11 THE COURT: Where's that?

12 MR. HANSON: That is on page nine.
13 Basically, in that situation a contractor had been
14 specifically contracted to manufacture panels to
15 go on one of these sound deafening walls that we
16 see out by the highway. They were to deliver
17 those to the site. There was another
18 subcontractor of the general contractor who had a
19 crane there. And the crane people would remove
20 the panels from the truck, the people from Yancey
21 would be on-site constantly, they were to examine
22 and patch the panels. Then the crane would move
23 them, incorporate them into the wall.

24 THE COURT: Sounds like the jersey wall
25 that Mr. Karn was talking about.

1 MR. HANSON: I don't know that there is
2 much difference. That's probably what he is
3 talking about. It wasn't actually a jersey wall.
4 My understanding is it was a sound wall. But, it
5 would be very similar. It's just the nature of
6 the prefabricated section that's being put in to
7 place. In that situation those people --

8 THE COURT: But, suppose instead --
9 well, go ahead.

10 MR. HANSON: The people from the
11 manufacturer and material suppliers were there
12 constantly and they were constantly making repairs
13 in the intermittent stage of it comes off the
14 truck, we patch and replace and it goes onto the
15 wall.

16 THE COURT: Seems to me the distinction
17 can be made, it would have been just as -- well,
18 it would not have been just as easy for the
19 manufacturer of those walls to have them sent back
20 to its plant and do the patching there. Just for
21 his convenience and the convenience of the
22 contractor that was done on-site. But, that's not
23 different than having them sent back to the plant
24 and having them patched at the plant and sent back
25 out.

1 MR. HANSON: That's correct.

2 THE COURT: But, you can't do that with
3 the scaffold. The scaffolding has to be taken
4 down and put back up on-site.

5 MR. HANSON: But, it still doesn't
6 change the fact that the act of moving the
7 scaffolding is the final act of delivery of that
8 tool. The scaffolding is nothing more than a
9 tool. No person involved with the erection of the
10 scaffolding actually did any of the brick work.

11 THE COURT: But, is it? This
12 scaffolding might be something that's all into
13 itself. Whatever that Latin word is, there is no
14 proper analogy. Isn't it the duty of the
15 contractor to be able to get to the work that has
16 to be done? Isn't that part of his function?

17 MR. HANSON: And the contractor used a
18 number of different methods to affectuate that
19 purpose, Your Honor. The evidence before the
20 court is that they used the --

21 THE COURT: If the contractor is a coal
22 mining company, that coal mining company's
23 employees have to get to the coal mine, have to
24 get to the coal. And if they get to the coal on a
25 railroad car that's operated by another entity,

1 isn't that -- maybe that's just farfetched. Maybe
2 that's not even an appropriate analogy.

3 MR. HANSON: These cases, Your Honor,
4 look like they are fairly fact specific. That's
5 something that's -- the difference I would say is
6 that is something that is permanently on-site and
7 has been installed.

8 THE COURT: But, isn't the scaffolding
9 permanently on-site?

10 MR. HANSON: It's not permanently
11 on-site. As soon as the be scaffolding is
12 finished, it is taken back.

13 THE COURT: As soon as the coal is
14 taken out of the mine, it's gone, too.

15 MR. HANSON: I can't imagine somebody
16 would let -- somebody would agree to allow their
17 rail lines to be permanently affixed because then
18 they would be the property of the coal miner.

19 THE COURT: That's what I am saying.
20 It is not permanently affixed. It's there as long
21 as the coal mining operation -- maybe we shouldn't
22 keep going down this line.

23 THE COURT: But, wait a minute. Isn't
24 the scaffolding a permanent part of their job?
25 When the job is over, the scaffold is gone, but

1 there is no longer any job?

2 MR. HANSON: The scaffolding itself,
3 Your Honor, is not incorporated into the finished
4 product. It is not a part of the finished
5 product. It is a tool that is used.

6 THE COURT: I was using permanent in a
7 different way.

8 MR. HANSON: The court has --

9 THE COURT: But, neither --

10 MR. HANSON: In their analyses, Your
11 Honor, they have looked at people on the site that
12 are delivering materials. And, you know, material
13 is analogous to a tool. They say well, obviously
14 someone delivering material, you can't do --

15 THE COURT: It doesn't make any
16 difference, does it, that the material is or is
17 not permanently on the site?

18 MR. HANSON: It --

19 THE COURT: Wait a minute. If you have
20 Pleasant's Hardware delivering hammers to the
21 site, these hammers are not a permanent part of
22 that site.

23 MR. HANSON: That's correct.

24 THE COURT: They are taken away.

25 MR. HANSON: And there is no comp bar

1 for them delivering them.

2 THE COURT: And there is no bar under
3 workers' compensation. So the fact that it's not
4 a permanent part doesn't mean anything, does it?
5 Because other things, the cement and the nails,
6 are permanent parts of the project. But, there is
7 still material there. So that's not the
8 distinguishing fact.

9 MR. HANSON: The distinguishing thing
10 has been, Your Honor, that if the supplier of the
11 materials goes beyond the act of delivery and
12 incorporates that product, finished product, into
13 the job, and they have a number of cases that have
14 looked at that, Your Honor, they have had a case
15 and they drew the distinction in Burrows where you
16 had a Sheetrock company's employee that was taking
17 at their direction the amount of sheets that they
18 said to take to each individual room and stacking
19 them. They said that's the final act of delivery.
20 Then if you look at another --

21 THE COURT: And there was no bar.

22 MR. HANSON: And there was no bar.
23 That's correct. And if you looked at another --

24 THE COURT: Even though the Sheetrock
25 became a permanent part of the project?

1 MR. HANSON: That's correct. But, when
2 you have the material suppliers going ahead and
3 incorporating the materials into the job, then
4 they have been held to have gone beyond the final
5 act of delivery. And this had --

6 THE COURT: If they had actually put
7 the Sheetrock up.

8 MR. HANSON: That is correct.

9 THE COURT: Then they are doing the job
10 of the contractor. Seems to me we can talk about
11 all of these cases. But, unless this is a case on
12 point, and I am very interested in the Bristow
13 case, the real question is whether putting up
14 scaffolding and taking down scaffolding and
15 rearranging scaffolding and moving scaffolding,
16 whether that is the job of the contractor.

17 MR. HANSON: It absolutely is not the
18 job of the contractor, Your Honor. Because the
19 contractor --

20 THE COURT: Mr. Karn is going to get
21 up in a few seconds and say it is.

22 MR. HANSON: Because the contractor
23 doesn't have personnel required to put that up.

24 THE COURT: Only because it's easier
25 and probably more cost effective to the contractor

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1 to get someone else to do it. But, if the General
2 Assembly passed a law tomorrow saying that there
3 shall be no companies whose ^{sole} ~~sole~~ function is to
4 put up scaffolding, and that all Class A
5 contractors must put up the scaffolding
6 ~~themselves~~ ^{themselves}, you can bet they will have employees
7 tomorrow who are qualified to put up scaffolding.

8 MR. HANSON: My understanding is it
9 wouldn't be a tomorrow kind of thing. There's a
10 little more to it.

11 THE COURT: That's why I put both of
12 those in there. First of all, I put Safeway out
13 of business so all their employees are out of
14 work.

15 MR. HANSON: I think you need to look
16 in this case at the case that the court cited by
17 way of comparison. And that's Garrett vs. ^{Tubler} ~~Tubler~~
18 Products, Your Honor. And that addresses and
19 defeats both of the arguments. The defendant's
20 first argument. What we call ourselves in the
21 contract shows what we are. We call ourselves a
22 subcontractor. If you look at the contractual
23 documents in that case, they are equally as in
24 depth and use subcontractor as many or more times
25 in this than that case does.

1 The second thing they talk about is, is
2 in that situation ^{Tadler} ~~Tabler~~ fabricated a special
3 steel column under the direction of the
4 architects. They delivered it to the site and
5 they had to assist in the unloading. There are
6 other indications, when you get into the system of
7 unloading, that there would be some problem with
8 it. During the unloading process someone is
9 injured. And what they say is that the contract
10 did not call for them making that delivery, and it
11 was FOB which mean they are responsible for
12 unloading, did not call for them to erect the
13 steel. And that's the key here. The contract
14 between Safeway and White does not call for
15 Safeway in any manner to do the actual work of the
16 job which is the brick work itself. So if you
17 look at those two cases, that's the analogy. In
18 the Bristow v. ~~Safeway~~ Steel case, that court says
19 this is just a tool. We don't even need to go to
20 the analysis we did in the materials supplier
21 case. So this case is even further away than the
22 materials supplier, a material incorporated into
23 the actual job, you look to see if they are
24 assisting in incorporating that into the thing.
25 But, this is a tool. So the tool is even further

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1 away. You don't even need to look at that. It's
2 just a hammer. And, indeed, that would clearly
3 show that they are not the supplier of a tool that
4 remains in its possession and is removed even
5 though it is a little bit more complex form of
6 delivery, it certainly is not but so much more
7 complex form of delivery than the workers that are
8 constantly on-site examining the panels in Yancey
9 or the -- and it speaks in ^{Tubler} ~~Tubler~~ Steel of a
10 continuous, non-interrupted supply of trucks. So
11 they had to continuously have enough trucks to
12 have these steel columns being brought in so there
13 would never be an interruption in unloading. You
14 clearly have a greater interaction in that
15 situation between the contractor erecting the
16 building and the supplier of the steel tubes than
17 you do in this situation. In this case there is
18 no control, there is no joint work being done by
19 the people. And after --

20 THE COURT: You say there is no
21 control. But --

22 MR. HANSON: There is no on the site
23 direction of do this, do that or supervision.
24 Obviously --

25 THE COURT: You say there is not. But,

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1 how does Safeway know when and where to put up the
2 scaffolding?

3 MR. HANSON: Your Honor, that goes
4 directly to the Burrows case. And they told that
5 person delivering the Sheetrock how many sheets to
6 deliver and stack in each room. So the fact that
7 you tell them where to deliver their material or
8 where to deliver or plays their tool has been
9 examined and determined not to be determinative.
10 The determination is do they do the actual work to
11 be done by the general contractor, do they go
12 beyond the mere delivery and spread the sand. And
13 they have looked at two cases that are pretty much
14 analogous. One, they just deliver cement and they
15 dump it. And the other, they deliver sand and
16 spread it to the contract specifications on the
17 base. Here you do not have any employees of
18 Safeway that are in any way dealing with the
19 specific contract specifications, that is, the
20 repair of the defective facade of Sanger Hall.
21 You have them only delivering the tool and
22 removing that tool from the job site.

23 THE COURT: But, again, and we are
24 probably going around in circles, but it seems to
25 me you have something else. And whether this is

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1 determinative or not, I don't know. But, it seems
2 to me it is significant. You have Safeway putting
3 the contractor's employees where they needed to be
4 in order to perform the work. The point is -- I
5 don't know. But, it seems to me the import of.
6 But, it's something I have to consider.

7 MR. HANSON: I understand that. But,
8 they have looked at that case and addressed that
9 issue specifically in Burrows in that they told
10 the contractor's employees which room and how
11 many.

12 THE COURT: That's --

13 MR. HANSON: Let me get to the next
14 case, Your Honor. And also in --

15 THE COURT: Wait a minute, Mr. Hanson.
16 That's different. It's different -- there is a
17 difference between telling somebody where to put a
18 product and having that other somebody, the people
19 you're calling a stranger to the employee, getting
20 the contractor's employees where they need to be
21 in order to perform the work. That's more
22 analogous to the trained operator taking the
23 employees to the coal mines.

24 MR. HANSON: That's a case we have
25 never seen cited by anybody and don't know the

1 specific facts.

2 THE COURT: If it was easy, you
3 wouldn't have taken the last 20 minutes arguing
4 it.

5 MR. HANSON: The other case in Yancey
6 where they are building the wall, we don't have
7 the facts in that that we do in Burrows. But, I
8 would assume that the people who brought the
9 trucks in with sound barriers had nowhere to go
10 to, had to know how far the wall has progressed
11 and had to be told that by the general contractor.
12 That's all that we have here, Your Honor. We have
13 an ongoing project. And rather than put up the
14 structure all at once, they came out and put it up
15 in stages, because apparently there were
16 engineering problems that would prevent them from
17 coming out there and putting the scaffolding up
18 all at once. So I don't think there is a
19 distinction to be made. If we come out and put
20 the scaffolding up all at once, then we are a mere
21 supplier of the tool. If we come out and move the
22 scaffolding occasionally because there are
23 engineer problems that keep us from performing all
24 at one time, I don't see that that's a distinction
25 that's been drawn in any of the cases.

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1 THE COURT: On the sound, the highway
2 soundproofing walls, in that case did the wall
3 company actually erect or put up the
4 soundproofing?

5 MR. HANSON: In that case there was --
6 the general contractors people moved the sound
7 barrier walls off the truck that I assume was
8 engaged by the wall panel people. Then these
9 people inspected it and then they moved it again
10 into the wall.

11 THE COURT: Did they put it into the
12 wall?

13 MR. HANSON: No. They did not
14 incorporate the material into the wall.

15 THE COURT: Where did they leave it?
16 How close to the final location did they put it?
17 And does that make a difference? Again, you're
18 going back to the Sheetrock case. If the
19 deliverer brought it and didn't just put it down
20 on the ground where it had to go, near where it
21 had to go, but actually held it up while the
22 people came along and put the tape and everything
23 else in --

24 MR. HANSON: This is the --

25 THE COURT: Sounds to me like that's

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1 part of installation.

2 MR. HANSON: This is the best answer I
3 can give to you for the facts you want on that
4 case. It says that at the job site JTE Crane
5 unloaded a panel from ^{RECO's} ~~Rice's~~ (phonetic) delivery
6 truck, who was the manufacturer of the panels, and
7 placed it on a trailer for inspection rather than
8 moving each panel directly from the delivery truck
9 to placement in the sound barrier wall. Following
10 the inspection, the crane again lifted the panel
11 and moved it to its place in the wall. So it
12 sounds like they were taking it off one truck,
13 putting it on another truck. The people who were
14 the employees of the manufacturer of the panel
15 were looking at it.

16 THE COURT: Who was operating the
17 crane?

18 MR. HANSON: The crane was being
19 operated by the general contractor.

20 THE COURT: Suppose the crane was being
21 operated by the wall manufacturing people?

22 MR. HANSON: By the wall manufacturer?

23 THE COURT: Yes.

24 MR. HANSON: Well, if that were the
25 case, and they were incorporating those materials

1 that were permanently going to be left at the job
2 site, then I think you would fall within the other
3 cases. The test is, Your Honor, for material men
4 is, do they go beyond the act of final delivery
5 and actually incorporate the materials into the
6 wall.

7 THE COURT: But, that's not -- now we
8 have gone full circle. Because, again, I don't
9 think that's the distinction. I don't think that
10 not being the distinction hurts you. But, that's
11 not the distinction because I gave you an example
12 of the hardware company delivering hammers which
13 are not incorporated into the wall, not
14 incorporated into the project. After the job is
15 over, the hammers go back to the hardware company.
16 But, they are still material men. So that's not
17 the distinguishing factor. It seems to me that --
18 are you in a better position or worse position or
19 the same position that you would be in if instead
20 of an assembling the scaffolding, Safeway just
21 brought the scaffolding material on-site and
22 dumped it and White Construction employees
23 assembled the scaffolding?

24 MR. HANSON: I think we are in the same
25 position, Your Honor. Because a tool is a tool.

1 You know, in Bristow Safeway dropped the
2 scaffolding off. But, if you were merely
3 assembling a tool, then it's still a tool. In
4 other words, they looked at this case and said we
5 don't even need to get into this material man, are
6 you incorporating it into the wall, because this
7 is just a tool.

8 THE COURT: What was your answer to my
9 question when I say instead of this being a
10 scaffolding, it was just a ladder and all we are
11 doing is painting a house, we are not painting a
12 house, we are fixing bricks in the house? And we
13 have to affix bricks all the way around and the
14 company that delivers the ladder, instead of just
15 dropping it off at the site, leaves its employee
16 there. And every time the brick mason goes up and
17 repairs one level of bricks and comes down, the
18 brick mason says now move the ladder over here,
19 that driver moves to ladder to the next place and
20 that goes on for the entire job? Is the ladder
21 company still a stranger to the job?

22 MR. HANSON: I think it is, Your Honor,
23 because they are --

24 THE COURT: Because that's the
25 situation we have here?

1 MR. HANSON: He's still a --

2 THE COURT: Would you agree that's the
3 situation we have here?

4 MR. HANSON: Well, I think you need to
5 look at the other distinction, Your Honor. Is you
6 don't have the intimate coordination between the
7 person say moving the ladder and the painters. In
8 this situation you have White's people clear out
9 of the area, they come in and put it up, then
10 White's people come back.

11 THE COURT: I mean, you move the
12 ladder. I don't want to be around you when you
13 move the ladder. I am going to lunch. When I
14 come back, I want the ladder to be four feet to
15 the right.

16 MR. HANSON: Well, you know, I think
17 you then start getting back to the crane cases,
18 Your Honor. And in the crane cases where there
19 was a coordination in ^{Rec} Ray, the distinguishing part
20 I think between the ^{Rec} Ray case and this is that the
21 persons who were injured in the crane crew were
22 both actively working to incorporate a part of the
23 structure. And also in ^{Rec} Ray you had both the crane
24 crew and ^{Rec} Ray hooking the sling onto the beams that
25 they believe failed. In that case they are not

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1 really sure why it failed. What you have there is
2 the continuous interaction of the crane crew men
3 and the personnel on the ground. And you had them
4 cooperating and doing the exact same work, that
5 is, they are working together to put the slings on
6 the steel. Here you don't have that level of
7 cooperation. You have now move it to here, when
8 you're done, we will come back. So I think that
9 that is something that is possibly a distinction,
10 but has never been articulated in any cases that I
11 have seen.

12 But, if you look at, and there are a
13 number of crane cases where there is an intimate
14 interaction of the employees during the act that
15 causes the injury, they have held that it is
16 something that is comp barred. But, if -- and I
17 can't say because the defendant didn't cite many
18 of those cases, but what we have here is we don't
19 have that level of interaction. So I think if you
20 get to the part of is this a tool, but we are
21 moving the tool when you tell us to, I think then
22 you need to look at the analysis of the level of
23 immediate interaction we have. And in these cases
24 there has been immediate interaction in the same
25 task that has been the exact task the contract

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1 called for when the injury has occurred. Here
2 there has been no interaction at that period of
3 time during the time that the actual incident and
4 injury occurred. I think that's something that I
5 don't believe that the courts have looked to your
6 line of reasoning to make their decisions. But, I
7 think that if that were to be a line of decision
8 making to be looked at, that you would have to
9 look at the level of immediate involvement which
10 is what they seem to have done. But, in this
11 case, as I said, is it has been held in Bristow
12 Steel to be a mere tool. And I don't believe the
13 fact that you have people on-site who are
14 assembling for you a more complex tool really has
15 any effect on their analysis. They are of the
16 nature of the materials supplier, but they are
17 even further removed because their product is not
18 being finally incorporated into the work,
19 therefore becoming a part of the actual job that
20 is the contract, that is the resurfacing of the
21 defective brick work on Sanger Hall.

22 THE COURT: All right. Thank you very
23 much, sir. Mr. Karn?

24 MR. KARN: Just to clear up a few
25 things. First of all, the Bristow case, which I

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1 know you haven't had a chance to read, but I would
2 like to point out that that was a straight rental,
3 a drop off case. They dropped off unassembled
4 scaffolding on the site and did nothing else.

5 THE COURT: Would it have made a
6 difference if they assembled it and then left
7 never to return until after the job was over?

8 MR. KARN: If they had erected it, but
9 not done any of the movements?

10 THE COURT: Right.

11 MR. KARN: To be honest, I don't know
12 the answer to that. It's not what we have here.
13 Because we have the deck moves and you focused on
14 those and that's obviously a ^{legitimate} ~~distractor~~ from our
15 facts.

16 THE COURT: The reason I ask is Mr.
17 Hanson says the scaffolding is simply a tool, a
18 more complex tool he says, but it is a tool. And
19 to follow up on that -- I guess I can't because
20 you said you don't know what the answer to it is.

21 MR. KARN: I think a strong argument
22 can be made that, yes, in fact, doing that,
23 actually erecting on-site, brings you under the
24 cap of the workers comp, canopy of the
25 compensation act. But, in this particular case,

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1 if you want to use his analogy and say it is a
2 tool, Safeway is the one ^{operating} making the tool. We have
3 the ones that move part of the scaffold to a
4 different level much like a crane. When they need
5 somebody to operate the tool, to put their people
6 in the right position, they call Safeway and move
7 the decks.

8 THE COURT: But, they wouldn't have to
9 do that because Safeway simply could take that
10 scaffolding away, go back to the shop and bring
11 another scaffolding which would be dropping off
12 and picking up?

13 MR. KARN: You mean rather than move
14 the decks?

15 THE COURT: Yes.

16 MR. KARN: Add additional deck?

17 THE COURT: They have prefabricated
18 scaffolding so when then the scaffolding has to be
19 97 feet, they bring in one big, completely
20 assembled scaffolding. And then when it has to be
21 at 150 feet, they take that one away and bring in
22 one that's already completed.

23 MR. KARN: The only thing I can say to
24 that, it's not what happened here. It's very
25 impractical. I really don't know what impact that

1 would have. Mr. Hanson has argued that the test
2 is do they go beyond delivery and incorporate the
3 material into the project. That's not the test as
4 I read it. My reading of the Supreme Court test
5 is do they go beyond delivery. Incorporating the
6 material into the project isn't the only way to
7 transcend delivery.

8 Your Honor, in your case, I will give
9 you a copy of the case that you wrote in 1991,
10 that's the one about the roof warranty, and your
11 analysis, if you look at page 78, you discuss a
12 number of cases having to do with this material
13 man exception. And you say the real question is
14 whether in those cases where a material man
15 engages in some activity, in addition to simply
16 delivering material, which is what we have,
17 clearly they have gone beyond simply delivery,
18 they have erected and moved it, such additional
19 activity is primarily or perhaps even
20 substantially for the benefit of the owner, the
21 contractor or a subcontractor or for the benefit
22 of the material man himself. And in this case you
23 said the inspection of the roof for the purposes
24 of the warranty benefited the risk management
25 ability of the supplier, therefore it was

1 incidental to delivery and did not transcend
2 delivery.

3 Conversely in this case, if you follow
4 the money, they were paid specifically for their
5 labor so they could move these deck moves. It was
6 for the benefit of White and for the benefit of
7 VCU. It was a large portion of this contract.
8 And if you look at that, that is what makes this
9 particular case transcend delivery or supply of
10 equipment or a tool or material, whatever you
11 might want to call it. And that really mirrors
12 the reality of what was going on at this cite.
13 These people are were there for 5000 hours over
14 the course of this job doing these things.

15 Mr. Hanson also suggested that perhaps
16 there needs to be a closer nexus between the
17 participants on the job working more closely
18 together. I mean, in this particular case the
19 testimony is that when they dismantled this thing,
20 they had somebody right there next to them. They
21 would pull the anchors and patch it.

22 THE COURT: You're saying this was done
23 for the benefit of whom?

24 MR. KARN: That Safeway provided
25 on-site -- was specifically for the benefit of

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1 White and VCU in furtherance of the job. I think
2 that's undisputed. But, if you look at the money
3 they were paid specifically for their labor -- in
4 Yancey they were not paid specifically to have
5 somebody on-site to inspect the jersey walls or
6 the partitions, whatever you call them. They were
7 doing that because they were obligated to supply
8 usable material. Same thing for the guy
9 delivering the Sheetrock. It says we want you to
10 deliver X number of pieces of Sheetrock and we
11 want you to deliver it specifically to these
12 particular rooms. But, they weren't being paid
13 extra for that service.

14 In this particular case Safeway was
15 paid a lot of money to be on-call and to go out
16 there and spend a lot of time on-site moving the
17 pieces of this scaffolding so White Construction
18 could discharge their obligation ^{under} of the contract.
19 And I think that transcends delivery and I think
20 that's really where the ^{crux} ~~crutch~~ of the analysis is.
21 Because you correctly recognized that most of
22 these cases are materials that are incorporated
23 into the job. So the discussion really centers on
24 those two aspects. I mean, usually you have
25 somebody like a brick mason sub very clearly on

HALASZ REPORTING

1 the one hand, they are doing part of the actual
2 work, finished product, and then on the other hand
3 you have people just dropping stuff off. And, you
4 know, we are sort of in the middle here.

5 But, I think if you look at the
6 evolution of the cases of the Supreme Court, they
7 have carved out the small piece for delivering
8 material. They say sure, it's essential to the
9 overall contract so let's carve out that little
10 piece, so let's look and see if we fit into that.
11 And in this case we clearly don't because they
12 have transcended their delivery.

13 THE COURT: Thank you. Am I on any
14 kind of deadline?

15 MR. SKILLING: No, Judge.

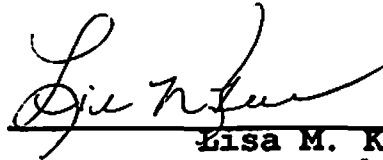
16 THE COURT: I will take this under
17 advisement because I have not had a chance to read
18 the plaintiff's brief. I will give you a decision
19 as quickly as I can, hopefully within the next two
20 weeks. Thank you very much.

21 (Hearing concluded at 3:10 p.m.)
22
23
24
25

CERTIFICATE OF REPORTER

I, Lisa M. Kull, certified shorthand reporter, do certify that the foregoing is a full, true and correct transcript of my stenographic notes taken in the above-captioned matter.

Given under my hand this 20th day of July, 2000.



Lisa M. Kull
Notary Public

My Commission Expires January 27, 2001.

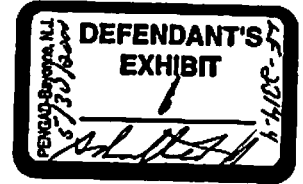
WHITE

P.O. BOX 728
1305 WEST HUNDRED ROAD
CHESTER, VIRGINIA 23831
(804) 768-8840
FAX (804) 768-8842

CONSTRUCTION COMPANY, INC.

Air Metal Corporation
7608 Compton Road
Richmond, VA 23228

Purchase Order No. 285-M3



DATE: May 6, 1997

PROJECT NO./NAME: Sanger Hall Wall Repair, Phase II, MCV Campus

SUBSTANTIAL COMPLETION DATE:

DATE OF PLANS/SPECS: October 20, 1996

NO. OF ADDENDA: One; Clarification #1

SCOPE OF WORK: This scope of work includes all labor, material, equipment and services as required to furnish and deliver the following items to the jobsite in accordance with the plans and specifications including Division 1 and the following trade division(s)/section(s) and as further described below:

- To furnish and fabricate 2,800 Ft. of 12 oz. Copper Flashing for the Shelf Angles. (\$2.00 Linear Ft.) Copper is to match detail 6/2/2 of the project drawings, and to be as specified in Section 07620, #2.3. Detail and section are included as part of this contract. Copper is to be fabricated in either 4' long, 5' long, 6' long or 10' long sections as dictated by site conditions when the wall is uncovered.

CONTRACT SUM: Five Thousand Six Hundred and no/100 Dollars (\$5,600.00).

PAYMENT TERMS: Payments will be made in accordance with the payment provisions of the Contract Documents.

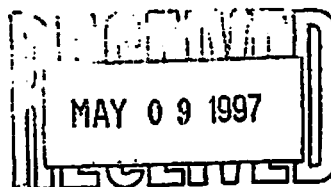
SUBMITTALS: Eight (8) copies of complete submittals are due within two (2) weeks of the date of this contract.

LIEN WAIVERS: Lien waivers (partial and final) will be provided by subcontractor when required by *White Construction*.

CHANGES: No extras or back charges will be accepted by *White Construction* without prior written authorization from *White Construction*.

White Construction Co., Inc.

Lloyd P. White, Jr.



Air Metal Corporation

By
Title: President
Date: 5-7-97

WC00394

AIR METAL CORP.

METAL FABRICATORS • HELIARC WELDING

7608 COMPTON RD. • RICHMOND, VA 23228

PHONE 262-1004

Proposal-Acceptance

Page of Pages

TO:		DATE	DATE OF PLANS
WHITE CONSTRUCTION CO., INC.		APRIL 30, 1997	
3601 WEST HUNDRED ROAD		JOB NAME	
CITY STATE AND ZIP CODE		JOB LOCATION	
CHESTER, VA. 23831			
PHONE	JOB PHONE	PROJECT DIRECTOR	
WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATES FOR:			

FURNISH AND FABRICATE (2,800 FT.) TWO THOUSAND, EIGHT HUNDRED FT.

12 OZ. COPPER FLASHING PER SPECS. NOT TO EXCEED 12" WIDE, (\$2.00) TWO DOLLARS PER FOOT.

PRICE: \$5,600.00 plus tax if applies

This price good for (10) ten days, as price of Copper changes often.

WE PROPOSE HEREBY TO FURNISH MATERIAL AND LABOR COMPLETE IN ACCORDANCE WITH ABOVE SPECIFICATIONS, FOR THE SUM OF

Five Thousand, Six Hundred & 00/100

DOLLARS (\$ 5,600.00 plus tax if applies

PAYMENT TO BE MADE AS FOLLOWS:

All material is guaranteed to be as specified. All work shall be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra cost will be executed only upon written orders and will become an extra charge over and above the amount set forth above. We shall not be responsible for delays caused by strikes, accidents, or other contingencies beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

AUTHORIZED SIGNATURE

Donald W. Smith

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN 10 DAYS.

ACCEPTANCE OF PROPOSAL

The above prices, specifications, terms and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

SIGNATURE

SIGNATURE

Date of Acceptance:

WC00395

Circuit Court
OF THE
City of Richmond

John Marshall Courts Building

RANDALL G. JOHNSON
JUDGE

400 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219-1999

June 15, 2000

William P. Hanson, Jr., Esquire
Emroch & Kilduff, LLP
P. O. Box 6856
Richmond, VA 23230-0856

William F. Karn, Esquire
Butler, Williams, Pantele & Skilling, P.C.
1309 East Cary Street, Second Floor
Richmond, VA 23219

John H. Carstens, Esquire
Jordan, Coyne & Savits, L.L.P.
10486 Armstrong Street
Fairfax, VA 22030

Re: Case No. LF-2314-4
Lisa C. Peck, Administratrix
v.
Safway Steel Products, Inc., et al.

Dear Counsel:

This wrongful death case is before the court on a plea in bar of workers' compensation. An evidentiary hearing was held on May 30, 2000.

In November 1997, White Construction Company, Inc. was the general contractor on a project to repair and replace deteriorated exterior brick and limestone panels on Sanger Hall, a building located on the campus of the Medical College of Virginia in Richmond. The project involved the use of scaffolding to allow White's employees to reach portions of the building that could not be reached from the ground. Safway Steel Products, Inc. provided the scaffolding under a contract with White.

On November 25, 1997, plaintiff's decedent, William R. Peck, Jr., who was a construction superintendent for White, fell from the scaffolding to his death. The motion for judgment alleges that the scaffolding was defective and unsafe. Originally named as defendants were Safway, which according to the motion for judgment "negligently designed, manufactured, marketed, distributed, delivered, leased, and inspected" the scaffolding; HEK Platforms & Hoists, Inc., which according to the motion for judgment "negligently designed, manufactured, marketed, distributed,

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John H. Carstens, Esquire
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delivered, sold, tested, and inspected" the scaffolding; and Dunbar, Milby, Williams, Pittman & Vaughan, P.C., which was the engineer on the project. Safway filed a third-party motion for judgment against four other entities, but none of those other entities have been served. Dunbar has now been nonsuited, leaving Safway and HEK as the only defendants. It is Safway's plea that is presently before the court.

The relevant considerations in cases such as this have been set forth many times by our Supreme Court,¹ and no detailed discussion of those considerations will be set out here. Generally, the test is whether a person or other entity performing work or services for a general contractor was, at the time of the injury or death at issue, an "other party;" that is, whether the person or other entity was engaged in an activity that was not part of the trade, business, or occupation of the general contractor. If the person or other entity was an "other party," also referred to in the cases as a "stranger" to the trade, business, or occupation of the general contractor, an injured party can maintain a common law action to recover for his or her injuries. Otherwise, the exclusive remedy is under the Virginia Workers' Compensation Act, Va. Code §§ 65.2-100 et seq. Each case, of course, must be decided on its own particular facts. *Bassett Furniture v. McReynolds*, 216 Va. 897, 902, 224 S.E.2d 323, 326 (1976). Based on the facts of this case, a common law action cannot be maintained against Safway.

As already noted, the project on which plaintiff's decedent was killed required White, the general contractor, to repair and replace deteriorated brick and limestone panels at Sanger Hall. That could not be done without the use of some device(s) -- e.g., ladders, cranes, scaffolding -- to allow White's employees to reach all sections of the building that needed repair. White chose to use scaffolding. It contracted with Safway to provide the scaffolding. In fact, not only did the contract require Safway to deliver the scaffolding to the job site, it also required Safway to

¹See, e.g., *Johnson v. Jefferson National Bank*, 244 Va. 482, 422 S.E.2d 778 (1992); *Rasnick v. The Pittston Company, Inc.*, 237 Va. 658, 379 S.E.2d 353 (1989); *Carmody v. F. W. Woolworth Co.*, 234 Va. 198, 361 S.E.2d 128 (1987); *Smith v. Horn*, 232 Va. 302, 351 S.E.2d 14 (1986); *Conlin v. Turner's Express, Inc.*, 229 Va. 557, 331 S.E.2d 453 (1985); *Whalen v. Dean Steel Co.*, 229 Va. 164, 327 S.E.2d 102 (1985); *Stewart v. Bass Construction Company*, 223 Va. 363, 288 S.E.2d 489 (1982); *Stout v. Onorati*, 221 Va. 143, 267 S.E.2d 154 (1980); *Bosher v. Jamerson*, 207 Va. 539, 151 S.E.2d 375 (1966); *Rea, Administratrix v. Ford*, 198 Va. 712, 96 S.E.2d 92 (1957); *Sykes v. Stone & Webster Eng. Corp.*, 186 Va. 116, 41 S.E.2d 469 (1947).

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assemble, disassemble, and reassemble the scaffolding at the job site each time White's employees needed to move to a different section of the building. The contract called for such assembly, disassembly, and reassembly to occur at least twelve times. The court holds that such activity by Safway prevents it from being an "other party" within the meaning of the relevant cases.

In its opposition to Safway's plea, plaintiff cites several cases holding that deliverymen and materialmen were not engaged in the trade, business, or occupation of general contractors. It is plaintiff's argument that Safway also was a deliveryman or materialman -- that is, that its sole function was to provide necessary materials (scaffolding) to the job site -- and that it was not engaged in the trade, business, or occupation of White. The court rejects plaintiff's argument.

In *Burroughs v. Walmont*, 210 Va. 98, 168 S.E.2d 107 (1969), Burroughs was an employee of a trucking company that delivered sheetrock to a construction site. While carrying sheetrock into the homes under construction, Burroughs fell down an open stairwell in one of the homes and was injured. He sued Lindsey & Waldron, the general contractor. The trial court dismissed the case on a plea of workers' compensation. The Supreme Court reversed. In doing so, the Supreme Court discussed *Bosher v. Jamerson*, 207 Va. 539, 151 S.E.2d 375 (1966), which held that a truck driver delivering sand to a job site for use in a cement floor, and who helped to spread the sand in the foundation area in accordance with the building specifications, was engaged in the trade, business, and occupation of the general contractor, thereby precluding an action by an employee of the general contractor against the driver's employer for injuries allegedly sustained as a result of the driver's negligence. The Court said:

There is a significant difference between *Bosher* and this case. The deliveryman in *Bosher* delivered the sand, and he participated in laying the 6-inch sand base required by the building specifications. The deliveryman in this case delivered the sheetrock to the rooms where it would be used by the workmen, but he did not participate in the construction of the buildings.

The gathering of material is of course essential to the construction of a building. So in a sense each supplier of material is engaged in the general contractor's trade, business or occupation. But a line must be drawn to determine who is an "other party" for

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the purposes of the Workmen's Compensation Act. And persons who function solely as suppliers and deliverers of goods have been held "other parties". . . .

In this case the stacking of sheetrock in the several rooms constituted the final act of delivery, not an act of construction. So Burroughs's activities did not transcend delivery, and he was not engaged in the trade, business or occupation of Lindsey & Waldron. Lindsey & Waldron was therefore an "other party", and Burroughs could maintain this tort action.

210 Va. at 99-100 (emphasis in original, citations omitted).

Similarly, in *Hipp v. Sadler Materials Corp.*, 211 Va. 710, 180 S.E.2d 501 (1971), the Supreme Court reversed a trial court's grant of summary judgment against an employee of a general contractor who was injured by the driver of a cement truck at a job site. The driver was employed by Sadler Materials Corp., which had agreed to furnish and pour concrete at the construction site. Distinguishing the case from *Bosher*, *supra*, the Court said:

The trial court relied upon *Bosher v. Jamerson*, 207 Va. 539, 151 S.E.2d 375 (1966), wherein we held that the spreading of sand in accordance with plans and specifications, which called for a six-inch sand base beneath the floor of a building under construction, constituted part of the trade, occupation and business of the general contractor.

* * *

In this case, Sadler was required only to deliver concrete where directed, not to spread or finish the concrete. In performing Sadler's obligation, Sadler's employee was performing in our opinion the final act of delivery, not an act of construction constituting the trade, business or occupation of the general contractor. We therefore hold that the Workmen's Compensation Act does not bar this action.

211 Va. at 711.

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In *Yancey v. JTE Constructors, Inc.*, 252 Va. 42, 471 S.E.2d 473 (1996), Reinforced Earth Company ("RECO") had contracted with a general contractor to design, manufacture, and deliver sound barrier wall panels to a job site on Interstate Highway 66. The contract required RECO to "provide on site patching at its cost for materials delivered damaged to the job site." At the job site, the general contractor's crane unloaded a panel from RECO's delivery truck and placed it on a trailer for inspection and patching, rather than moving each panel directly from the delivery truck to placement in the sound barrier wall. Following the inspection, the crane again lifted the panel and moved it to its place in the wall. This procedure allowed the crane to place an inspected panel into the wall while another panel was being inspected. John Yancey, a RECO employee, was injured when one of the three-ton panels fell while he was inspecting it. He sued the general contractor, but his suit was dismissed by the trial court. The Supreme Court reversed:

The panels manufactured and delivered by RECO were not the sound wall, but were component parts of the wall, much like nails, boards, and sheetrock are component parts of a house. RECO agreed to repair sound panels damaged during transit. Yancey's inspection and patching activities were the final acts of delivery required by the contract. Yancey's actions did not extend to incorporating the panels into the sound wall. Therefore, Yancey was not involved in furnishing, designing, or installing a sound wall.

252 Va. at 45.

It is plaintiff's position that just as the deliverymen in the cases cited above were deemed by the Supreme Court not to be engaged in the trades, businesses, or occupations of the general contractors to whom they were making their deliveries, Safway must be deemed to have been a deliveryman of scaffolding and not engaged in the trade, business, or occupation of White. Unlike the deliverymen in the cases cited above, however, Safway did much more than simply deliver the scaffolding to the job site. By assembling, disassembling, and reassembling the scaffolding whenever White's employees needed to move to a different section of the building, Safway had an integral and ongoing role in the construction project itself.

Perhaps the distinction between Safway's role in the project at issue in this case and the general role of a deliveryman is best illustrated in another case involving Safway. In *Bristow v.*

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Safway, 327 F.2d 608 (4th Cir. 1964), Safway contracted with Robert M. Dunville and Bros. to provide scaffolding for a project that Dunville was performing under a contract with Richmond Food Stores. As the court was careful to point out, Safway's contract only required Safway to provide scaffolding. Safway had no other obligation:

The formal lease agreement between Safway and Dunville did not require Safway to do anything more than deliver the unassembled scaffolding to Dunville at the construction site. Accordingly, the equipment was placed at the Richmond Food plant by Safway, but no employee of Safway remained there or had anything to do with the erection of the scaffold. It was put up by Dunville employees exclusively.

327 F.2d at 609.

While working on the scaffolding, John Bristow, an employee of Dunville, was injured when the scaffolding turned over. The court held that he was not barred from suing Safway:

Our judgment . . . is that Safway was an "other party" not engaged in "the execution or performance" of, and not "employed in", the work embraced within the contract between Richmond Food and Dunville. Safway simply gave Dunville permission to use its scaffolding, which remained the property of Safway. This did not convert Safway into a participant in the work. It was the equivalent of renting or selling a tool, such as a hammer, for use by Dunville in its work.

327 F.2d at 610.

Unlike its obligation in *Bristow*, Safway's obligation in the case-at-bar required more than simply "renting or selling a tool." Indeed, to use the Fourth Circuit's "hammer" analogy, Safway's obligation here was not simply to deliver a hammer to a job site. In this case, Safway was required to return to the job site each time a nail was driven and move the hammer to the site of the next nail. This, in this court's view, made Safway a participant in the work being performed. It was not an "other Party."

Finally, the court notes plaintiff's argument that the agreement between White and Safway was not a subcontract. That fact, however, even if true, makes no difference. As was said in

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Rasnick v. The Pittson Company, Inc., 237 Va. 658, 662, 379 S.E.2d 353 (1989):

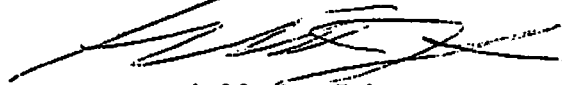
Under Virginia law, the test continues to be whether the act complained of relates to the business of the employer [or general contractor]. The existence of a contract is not required.

237 Va. at 662.

Thus, whether Safway's agreement with White was a subcontract or an independent contract, something the court does not decide, is not dispositive. Whatever Safway's status, it was engaged in White's trade, business, and occupation of replacing and repairing brick and limestone panels at Sanger Hall. Plaintiff's suit against Safway is barred.

A copy of an order consistent with this opinion, and which I have entered today, is enclosed.

Very truly yours,



Randall G. Johnson

VIRGINIA:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

LISA C. PECK, Administratrix of
the Estate of William R. Peck, deceased,

Plaintiff,

v.

LF-2314-4

SAFWAY STEEL PRODUCTS, INC., et al.

Defendants.

O R D E R

This cause came on May 30, 2000, on defendant Safway Steel Product, Inc.'s plea of workers' compensation, and was argued by counsel.

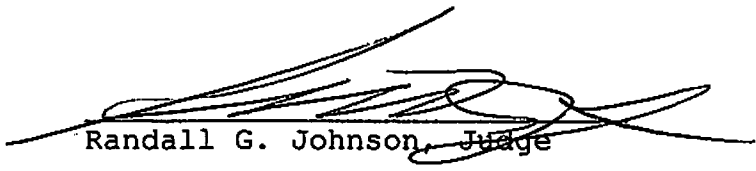
Upon consideration whereof, and for the reasons stated in the letter opinion dated this date, it is --

ORDERED that the plea is sustained and Safway Steel Products, Inc. is dismissed as a defendant in this action, plaintiff's objection being noted.

A copy of this order was mailed this day to counsel of record.

ENTER

6/15/2000


Randall G. Johnson, Judge

ASSIGNMENTS OF ERROR

I. The trial court erred in sustaining defendant Safway Steel Products, Inc.'s worker's compensation plea in bar.

II. The trial court erred in finding that Safway Steel Products, Inc. was engaged in the trade, business and occupation of plaintiff's decedent's employer—and consequently Safway Steel Products, Inc. was not an "other party" under the Virginia Worker's Compensation Act.