218 Va. 257 CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JAN 10 1977
RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 761064

VALLEY LANDSCAPE COMPANY, INC.,

Appellant,

v.

PETER G. ROLLAND,

Appellee

APPENDIX

Anita O. Poston
Joseph A. Gawrys
VANDEVENTER, BLACK, MEREDITH & MARTIN
One Commercial Place
Norfolk, Virginia 23510

Counsel for Appellant

FRED R. SURFACE & ASSOC. INC., HERITAGE BUILDING, RICHMOND, VA. (804) 643-7789

TABLE OF CONTENTS

APPENDIX PAGES

1. THIRD PARTY MOTION FOR JUDGEMENT 1-2

2. DEMURRER TO THIRD PARTY MOTION FOR JUDGEMENT 3

3. GROUNDS OF DEMURRER 4-5

4. ORDER SUSTAINING DEMURRER WITH LEAVE TO AMEND 6

5. AMENDED THIRD PARTY MOTION FOR JUDGEMENT 7-9

6. DEMURRER TO AMENDED THIRD PARTY MOTION FOR JUDGEMENT 10-11

7. MEMORANDUM OF AUTHORITIES IN SUPPORT OF THE DEFENDANT's DEMURRER 12-29

8. MEMORANDUM OF AUTHORITIES IN OPPOSITION TO DEFENDANT'S DEMURRER 30-36

9. ORDER OF APRIL 16, 1976 37

10. CONSTRUCTION CONTRACT BETWEEN ODU AND VALLEY LANDSCAPE 38-39

11. GENERAL CONDITIONS OF THE CONTRACT BETWEEN ODU AND VALLEY LANDSCAPE 40-59

THIRD PARTY MOTION FOR JUDGMENT

Now comes defendant and third party plaintiff, Valley Landscape Company, Inc. (hereinafter called Valley), by counsel, and in this its Third Party Motion for Judgment against Peter G. Rolland, individually and doing business as Peter G. Rolland & Associates (hereinafter called Rolland) Third Party Defendants, alleges as follows:

1. That Valley is a defendant in a suit brought in this Court by Commonwealth of Virginia under the style of Commonwealth of Virginia, ex rel. Charles B. Walker, Comptroller, Plaintiff v. Valley Landscape Company, Inc. and Maryland Casualty Company, Defendants. A copy of the Motion for Judgment filed by the Commonwealth of Virginia is attached to this Third Party Motion for Judgment, marked Exhibit A, and asked to be read as a part hereof as if the same was set forth at length.

2. That Valley has denied any liability to the plaintiff in the aforesaid action, but without waiver of said denial, in the event any liability should be imposed against Valley and in favor of the Commonwealth of Virginia, that Third Party Defendant Peter G. Rolland, doing business as Peter G. Rolland & Associates, is liable to the Third Party Plaintiff for all or a part of the claim of the Commonwealth of Virginia asserted against Valley.

3. That the aforesaid suit brought by the Commonwealth of Virginia arises out of plans and specifications for a certain project to be constructed at Old Dominion University, Norfolk, Virginia, and said plans and specifications were prepared by the Third Party Defendant.

4. That Third Party Defendant has done business in the State of Virginia, transacted affairs in the State of Virginia and contracted to supply services in connection with the aforesaid plans and specifications in the State of Virginia. Thethe original Motion for Judgment filed against Valley, and this Third Party Motion for Judgment, are based on the business transacted and the services said Third Party Defendant contracted to supply in this State.

WHEREFORE, in the event this Honorable Court should impose any liability on Valley and in favor of the Commonwealth of Virginia, then Valley moves this Honorable Court to award a judgment against Third Party Defendant in an amount which will fully indemnify it against such award which it may be required to pay, together with reasonable attorney's fees and costs of defense.

VALLEY LANDSCAPE COMPANY, INC.

By Joseph A. Gawrys
Of Counsel

Joseph A. Gawrys
Vandeventer, Black, Meredith & Martin
2050 Virginia National Bank Building
Norfolk, Virginia 23510

Certificate of Service

I certify that on 6-10-75 I mailed or delivered a true copy of the foregoing pleading to opposing counsel of record.

Joseph A. Gawrys

D E M U R R E R

Comes now the third-party defendant, Peter G. Rolland, and demurs to the third-party motion for judgment filed by Valley Landscape Company, Inc. on the grounds that it is insufficient at law.

PETER G. ROLLAND

By /S/ JOHN OAKEY, JR.
Of Counsel

John M. Oakey, Jr.
McGUIRE, WOODS & BATTLE
1400 Ross Building
Richmond, Virginia 23219

CERTIFICATE

This is to certify that the original of the foregoing demurrer was mailed to the Clerk of this Court for filing and a true copy thereof was mailed to Joseph A. Gawrys, One Commercial Place, Norfolk, Virginia, counsel for the plaintiff, on this the 29th day of July, 1975.

/S/ JOHN OAKEY, JR.
John M. Oakey, Jr.

GROUNDS OF DEMURRER - Case No. 8071

Comes now the third-party defendant, Peter G. Rolland, and for his grounds of demurrer filed herein states as follows:

1. The third-party motion for judgment states no basis upon which Valley Landscape Company, Inc. would be entitled to a judgment against Peter G. Rolland.

2. The third-party motion for judgment does not state there is any contractual relationship between the third-party defendant and Valley Landscape Company, Inc.

3. The third-party motion for judgment further states no fact upon which Peter G. Rolland would be liable to Valley Landscape Company, Inc. or anyone on the basis of tort.

4. The third-party motion for judgment is so vague that it is incapable of being answered.

5. The third-party motion for judgment does not state one fact to support its bare allegation that Peter G. Rolland "is liable to the third-party plaintiff."

6. The original suit is by the Commonwealth of Virginia against a contractor. The third-party claim would have to allege that the owner's agent is responsible to him for damages that he owed to the contractor. There is no theory of law under which an independent contractor of the owner would be liable to another contractor for the damages the second contractor might owe the owner for breach of contract.

7. The third-party action must either be brought on a contract of indemnification or a suit for contribution. No such contract is alleged nor does one exist. Contribution is improper where the original action is for contract.

8. There is no legal theory under which Valley Landscape can maintain a third-party motion for judgment against Peter G. Rolland.

WHEREFORE, said third-party defendant, Peter G. Rolland, demands that this action be dismissed.

PETER G. ROLLAND

By Counsel

John M. Oakey, Jr.
McGUIRE, WOODS & BATTLE
1400 Ross Building
Richmond, Virginia 23219

By /S/ JOHN OAKEY, JR.

CERTIFICATE

I hereby certify that the original of the foregoing grounds of demurrer was mailed to the Clerk of this Court for filing and a true copy thereof was mailed to Robert P. Kyle, Assistant Attorney General, 1101 East Broad Street, Richmond, Virginia, counsel for the plaintiff; and to Joseph A. Gawrys, One Commercial Place, Norfolk, Virginia, counsel for Valley Landscape Company, Inc., on this the 21st day of August, 1975.

/S/ JOHN OAKEY, JR.

John M. Oakey, Jr.

O R D E R

On December 30, 1975, came the defendant and third-party plaintiff, Valley Landscape Company, Inc., and the third-party defendant, Peter G. Rolland, by counsel, and argued to the Court the Demurrer filed by the third-party defendant to the Third-Party Motion for Judgment. And the Court being of the opinion that the Third-Party Motion for Judgment fails to state sufficient facts which, if true, would entitle the defendant and third-party plaintiff to a judgment against the third-party defendant. It is therefore ORDERED that the Demurrer is hereby sustained with leave granted to the defendant and third-party plaintiff for filing an Amended Third-Party Motion for Judgment if it be so advised, no later than January 29, 1976. It is further ORDERED that the defendant and third-party plaintiff file its Answers to the Interrogatories of the third-party defendant no later than January 29, 1976, or, in the alternative, incorporate the facts requested in the Interrogatories within the allegations of the Amended Third-Party Motion for Judgment.

ENTER: / /

_____
Judge

Seen:

_____ p.d

Seen and Objected to:

_____ p.d.

AMENDED THIRD PARTY MOTION FOR JUDGMENT

Now comes defendant and third party plaintiff, Valley Landscape Company, Inc. (hereinafter called Valley), by counsel, and in this its Amended Third Party Motion for Judgment against Peter G. Rolland, individually and doing business as Peter G. Rolland & Associates (hereinafter called Rolland) Third Party Defendants, alleges as follows:

1. That Valley is a defendant in a suit brought in this Court by Commonwealth of Virginia under the style of Commonwealth of Virginia ex rel. Charles B. Walker, Comptroller, Plaintiff v. Valley Landscape Company, Inc. and Maryland Casualty Company, Defendants. A copy of the Motion for Judgment filed by the Commonwealth of Virginia is attached to this Third Party Motion for Judgment and marked Exhibit A. This defendant filed its answer denying any liability, said answer being attached as Exhibit B. Exhibits A and B are attached hereto and by this reference made a part hereof.

2. That the aforesaid suit brought by the Commonwealth of Virginia, arises out of a contract for construction of a certain project at Old Dominion University, Norfolk, Virginia, and that the Third Party Defendant contracted with the Plaintiff to perform services as the architect on said project.

3. That the plans and specificiations furnished by the Third Party Defendant were defective and deficient, that Third Party Defendant failed to properly supervise the project with proper and qualified personnel, and that the Third Party Defendant breached its contract in other material respects.

4. That certain provisions of the Third Party Defendant's contract with Plaintiff were for the benefit of the general contractor.

5. That Rolland warranted and represented that the plans and specifications would be adequate and correct and that Rolland was competent and capable of maintaining a position of neutrality and of properly supervising the work.

6. That Rolland knew or should have known that pursuant to its contract as general contractor, Valley was required to use and rely on the plans and specifications, and that any defect therein would cause serious injury and damage to Valley.

7. That Rolland had a duty to supervise the work in good faith and knew or should have known that Valley was required to submit to its supervision.

8. That by the foregoing breach of contract and breach of other duties, the Third Party Defendant did interfere with the performance by Valley of its contract with Plaintiff causing said contract to be burdensome and impossible to perform, and causing damage.

9. That Valley has denied any liability to the Plaintiff in the aforesaid action, but without waiver of said denial, in the event any liability should be imposed against Valley and in favor of the Commonwealth of Virginia, that Third Party Defendant Peter G. Rolland, doing business as Peter G. Rolland & Associates, is liable to the Third Party Plaintiff for all or a part of the claim of the Commonwealth of Virginia asserted against Valley.

10. That Third Party Defendant has done business in the State of Virginia, transacted affairs in the State of Virginia

and contracted to supply services in connection with the aforesaid plans and specifications in the State of Virginia. The original Motion for Judgment filed against Valley, and this Third Party Amended Motion for Judgment, are based on the business transacted and the services said Third Party Defendant contracted to supply in this state.

WHEREFORE, in the event this Honorable Court should impose any liability on Valley and in favor of the Commonwealth of Virginia, then Valley moves this Honorable Court to award a judgment against Third Party Defendant in an amount which will fully indemnify it against such award which it may be required to pay, together with reasonable attorney's fees and costs of defense.

VALLEY LANDSCAPE COMPANY, INC.

By_____
Of Counsel

Vandeventer, Black, Meredith & Martin
2050 Virginia National Bank Building
Norfolk, Virginia 23510

Certificate of Service

I certify that on Jan. 29, 1976
I mailed or delivered a true copy of the foregoing pleading(s) to each counsel of record.

/s/

DEMURRER

The third-party defendant, Peter G. Rolland, by counsel, moves that the Amended Third-Party Motion for Judgment filed by Valley Landscape Company, Inc. be dismissed for failure to state a claim upon which relief may be granted. He also moves for dismissal of the action for improper joinder of causes of action in tort and in contract.

GROUNDS OF DEMURRER

Comes now the third-party defendant, Peter G. Rolland, by counsel, and for his grounds of demurrer filed herein states as follows:

1. The amended third-party motion for judgment states no facts upon the basis of which Valley Landscape Company, Inc. (Valley) would be entitled to a judgment against Peter G. Rolland (Rolland).

2. The facts alleged in the amended third-party complaint state that certain provisions of Rolland's contract to provide certain services for the Commonwealth of Virginia were for Valley's benefit. Such allegations are insufficient, as a matter of law, to make Valley a third-party beneficiary of the contract.

3. The facts alleged in the amended third-party complaint state that the plans and specifications furnished by Rolland to the Commonwealth of Virginia were defective and deficient and that Rolland failed to properly supervise the construction. There is no theory of law under which Rolland, as an architect, would owe any such duties to Valley, the contractor.

4. The facts alleged in the amended motion for judgment state that Rolland warranted his plans and specifications. No such express warranty is alleged, nor does one exist, and no such

warranty is implied in Virginia law.

5. The facts alleged in the amended third-party motion for judgment state that Rolland's alleged breach of his contract with the Commonwealth of Virginia tortiously interfered with Valley's performance of its contract with the Commonwealth of Virginia. There is no theory of law in Virginia under which such circumstances would give rise to indemnity or contribution.

6. The third-party defendant, Peter G. Rolland, demands that the action against him be dismissed for the improper joinder of parties and for the improper joinder of causes of action.

7. There is no legal theory under which Valley can maintain a third-party motion for judgment against Rolland.

WHEREFORE, said third-party defendant, Peter G. Rolland, demands that this action be dismissed.

PETER G. ROLLAND

By _____
Of Counsel

Murray H. Wright
Neil S. Kessler
McGUIRE, WOODS & BATTLE
1400 Ross Building
Richmond, Virginia 23219

CERTIFICATE

I hereby certify that the original of the foregoing grounds of demurrer was mailed to the Clerk of this Court for filing and a true copy thereof was mailed to Robert P. Kyle, Assistant Attorney General, 1101 East Broad Street, Richmond, Virginia, counsel for the plaintiff and to Joseph A. Gawrys, One Commercial Place, Norfolk, Virginia, counsel for Valley Landscape Company, Inc., on this the 3rd day of February, 1976.

_____

MEMORANDUM OF AUTHORITIES IN SUPPORT OF THE DEFENDANT'S DEMURRER

Preliminary Statement

This case was commenced by the filing of a Motion for Judgment on behalf of the Commonwealth of Virginia (the Commonwealth) against Valley Landscape Company, Inc. (Valley) and Maryland Casualty Company (Maryland). Old Dominion University (ODU) and the Commonwealth seek to recover all costs and expenses incurred as a result of Valley's alleged breach of performance of a contract (the Contract) with ODU, an institution of higher education of the Commonwealth duly organized and existing under the laws of the Commonwealth, for the construction of structures and sitework for a mall (the Project) at ODU's Norfolk campus. On or about May 9, 1974, Valley ceased performance on the Contract prior to fully performing its obligations thereunder and ODU was required to secure another contractor to complete the Project. Prior to Valley's ceasing performance, Maryland and Valley entered into a Standard Performance and Payment Bond, wherein Valley and Maryland bound themselves unto ODU to fully indemnify and save ODU harmless from all costs and damages which it might suffer by reason of Valley's failure to faithfully perform the Contract in strict conformity with the plans, specifications and conditions. Maryland has refused to honor its obligations as surety for Valley under the Standard Performance and Payment Bond despite demand therefor by ODU following Valley's cessation of performance on the Contract.

The defendant and third-party plaintiff, Valley, impleaded as third-party defendant the architect of the Project, Peter G.

Rolland, individually and doing business as Peter G. Rolland & Associates (Rolland). This Court sustained Rolland's Demurrer to Valley's Third-Party Motion for Judgment and granted leave to Valley to file an Amended Third-Party Motion for Judgment by January 29, 1976, which Valley has done. Rolland filed a Demurrer to the Amended Third-Party Motion for Judgment on February 3, 1976.

The essence of the demurrer is that the defendant and third-party plaintiff Valley is not entitled in law to any relief upon proof of all facts well pleaded in the Amended Third-Party Motion for Judgment. Furthermore, there is no question that defendant and third-party plaintiff Valley has misjoined causes of action in the Amended Third-Party Motion for Judgment. The Amended Third-Party Motion for Judgment is therefore insufficient and should be dismissed.

FACTS ALLEGED

Rolland is an architect who contracted with the plaintiff ODU to furnish plans and specifications for and to supervise the construction of the Project. Valley contracted with the plaintiff ODU to construct the Project pursuant to plans and specifications provided by the plaintiff ODU. Valley used and relied on the plans and specifications, and had to terminate its contract with ODU because they were defective and deficient and because Rolland did not properly supervise the construction.

It is alleged that Rolland warranted the correctness of its plans and specifications and his competence to properly supervise the construction. It is assumed that this means that a warranty was part of the contract between Rolland and ODU. No

contract between Rolland and Valley is alleged. But, Valley alleges that certain provisions of Rolland's contract were for Valley's benefit. Rolland breached the warranty by submitting inaccurate plans and specifications to ODU and by failing to properly supervise the construction. Because of these breaches of contract and breaches of warranty, Valley could not fully perform its contract with ODU and ODU incorrectly asserts that Valley has breached its contract and must reimburse ODU for additional expenses incurred in securing another contractor to complete the Project.

ISSUES

The first question is whether Valley has properly joined causes of action in its Amended Third-Party Motion for Judgment.

If so, the question is whether Valley may recover for Rolland's breach of his contract with ODU.

1. The Amended Third-Party Motion for Judgment Should be Dismissed for Misjoinder of Causes of Action.

There is no question that the Amended Third-Party Motion for Judgment should be dismissed for misjoinder of causes of action.

Paragraphs 3, 5, 6 and 7 seek to state a cause of action against the third-party defendant Rolland for breach of his contract with the plaintiff, to which defendant and third-party plaintiff Valley claims to be a third-party beneficiary (paragraph 4).

Paragraph 8 seeks to state a cause of action against Rolland based on his alleged interference with Valley's performance of its contract with the plaintiff, "causing said contract to be burdensome and impossible to perform." Allegations of interference with the performance of a contract sounds in tort. See Worrie v. Boze, 198 Va. 533, 95 S.E. 2d 192 (1956). Furthermore, the Amended Third-Party Motion for Judgment suggests that Valley is alleging that Rolland breached its warranties to ODU to make adequate and correct plans and specifications and to properly supervise the construction. Allegations of breach of warranty also sound in tort. duPont Company v. Universal Moulded Products, 191 Va. 525 (1950).

The joining of causes of action sounding in tort and contract in the same motion for judgment is prohibited. Kavanaugh v. Donovan, 186 Va. 85, 41 S.E. 2d 489 (1947); Standard Products v. Wooldridge, 214 Va. 476 (1974). Since the Amended Third-Party Motion for Judgment misjoins causes of action for tort and breach of contract, it should be dismissed.

2. Apparently, there are three approaches which Valley pursues in attempting to recover from Rolland. Valley claims that Rolland (a) breached his duties to Valley; (b) breached his contract with ODU, and that Valley, as a third-party beneficiary to that contract, was injured as a proximate result of Rolland's breach; and (c) breached his warranties to provide correct and adequate plans and specifications and to provide competent and neutral supervision of the construction.

These three approaches shall be discussed separately below.

a. Rolland owes no duties to Valley.

In the Amended Third-Party Motion for Judgment, Valley alleges that Rolland warranted that his plans would be adequate and correct and that he was competent and capable of maintaining a position of neutrality and of properly supervising the work (paragraph 5). Although it appears from these allegations that Valley is bringing an action against Rolland for breach of his duties, it is not clear whether Valley is also alleging that Rolland negligently breached his duties. But, even if it were possible for Rolland to do so (one does not negligently breach his duties; he either breaches them or fully performs them), it is clear an architect does not owe a contractor any duties where there is no privity of contract.

Although this issue has never been decided under prevailing Virginia law, it is clear that no such duties exist where the alleged damages arise out of a contractual relationship between the owner and the general contractor.

> [A]n action for negligence only lies where there has been a failure to discharge a legal duty. If there is no duty, there can be no negligence; and, although the defendant owes a duty to other persons, yet if he did not owe it to the plaintiff, his action will not lie. The duty must be due to the party injured, and the declaration must show this." Norfolk & Western Railway Co. v. Wood, 99 Va. 156, 158-159, 37 S.E. 846 (1901).

See also General Bronze Corp. v. Kostopulos, 203 Va. 66, 122 S.E. 2d 548 (1961); Noel v. Isbrandtsen Co., 179 F. Supp. 325 (E.D. Va., 1959); C. D. Kenny Co. v. Dennis, 167 Va. 417, 189 S.E. 164 (1937).

The only duties owed by Rolland under the facts alleged in the Amended Third-Party Motion for Judgment were owed to ODU and arose out of the contract between Rolland and ODU. It has been a well-established principle of common law that where the only duty which has been breached is created by contract, it is necessary, in order to hold the implicated party liable, that there be privity between the one charged with the breach and the person who has been injured by the breach. The plaintiff in an action for negligence who bases his suit upon the theory of a duty owed to him by the defendant as a result of a contract must be a party or must be privy to the contract; otherwise, he fails to establish a duty toward himself on the part of the defendant, and fails to show any wrong done to himself. See 57 Am. Jur. 2d, Negligence §48; 65 C.J.S., Negligence, §4(11).

In General Bronze Corp. v. Kostopulos, 203 Va. 66, 122 S.E. 2d 548 (1961) the Court upheld the privity requirement where an action of negligence was based on the breach of a contractual duty. In that case a motel owner sought to recover from a manufacturer of sliding doors for negligence in their design and construction. After their installation, the doors began to leak during heavy rains causing damage to the motel owner's property. In sustaining the demurrer of the defendant manufacturer the Court stated that there was no showing of any duty owed by the defendant to the plaintiff in the design and construction of the doors such as is necessary to constitute actionable negligence.

> Virginia is not among those jurisdictions which have repudiated the privity requirement in toto. We have, however, repudiated it, insofar as recovery for breach of warranty is concerned,

with regard to certain food stuffs for human consumption in sealed packages or containers. General Bronze Corp. v. Kostopulos, (supra).

The Court in C. W. Regan, Inc. v. Parsons, Brinkerhoff, Quade and Douglas, 411 F.2d 1379 (4th Cir. 1969), applying the law as it stood on March 7, 1962, ruled that an action could not be maintained on the basis of negligence without privity of contract. The case involved a suit by a contractor against a consulting engineer who had prepared plans for the construction of a tunnel. The contractor alleged that the engineer had approved the plans submitted by another contractor for the construction of a bulkhead and that due to the faultiness of its design the bulkhead leaked and flooded the tunnel. In dismissing the action against the engineer the Court ruled that absent privity there could be no recovery.

In fixing the liability of an independent contractor, the Court in City of Richmond v. Branch, 205 Va. 424, 137 S.E.2d 882 (1964), held that an independent contractor is generally not liable for injury to person or property of one not a party to the contract occurring after the independent contractor has completed the work and has turned it over to the owner or employer.

If Valley is to succeed in maintaining its tort action, it must rely upon §8-654.4. There can be no question that prior to its enactment no such cause of action would have existed in the absence of privity.

Note that the statute confines its application to negligence actions seeking recovery of damages for injury to person or property. If the Amended Third-Party Motion for Judgment does not seek to recover damages for injury to property, no cause of action is stated and the tort allegations must be dismissed.

Had the draftsmen of §8-654.4 intended to abrogate entirely the defense of no privity in negligence actions, that result could have been easily obtained by omitting the entire clause "...where recovery of damages for injury to person, including death, or to property..." It was the intention of the General Assembly in enacting §8-654.4 to fill a conspicuous void in the protection provided the public in §8.2-318 as evidenced in the Branch case. Since the contractor there was not a manufacturer or seller of goods, privity remained as a defense. To alter this result, §8-654.4 was enacted. The purpose of the limiting language cited above was to prevent the extension of the anti-privity rule to purely economic losses which had traditionally been governed by the rules of contract and warranty.

The limiting language of §8-654.4 makes it consistent with the effect of §402A, Restatement of Torts 2d, which provides (inter alia) for the liability of:

> One who sells any product in a defective condition unreasonably dangerous to the user or consumer, or to his property...for physical harm thereby caused to the ultimate user or his property (emphasis added).

In those states in which the doctrine of privity has been abrogated judicially, the evolution has stopped short of a declaration that privity is no longer required in cases involving economic loss unassociated with physical damage to person or property. From these cases comes the language of Section 402A.

In Seely v. White Motor Co., 45 Cal. Rptr. 17, 403 P.2d 145 (1965), Mr. Chief Justice Traynor discusses in detail the evolution of strict liability in tort in California. That case involved an appeal from a judgment against the manufacturer of a truck and in favor of its purchaser for lost profits occasioned by the

latter due to manufacturing defects in the truck. In explaining the reason for the continued requirement of privity in cases involving economic loss the Court commented:

> The distinction that the law has drawn between tort recovery for physical injuries and warranty recovery for economic loss is not arbitrary and does not rest on the "luck" of one plaintiff in having an accident causing physical injury. The distinction rests rather on an understanding of the nature of the responsibility a manufacturer must undertake in distributing his products. He can appropriately be held liable for physical injuries caused by defects by requiring his goods to match a standard of safety defined in terms of conditions that create unreasonable risks of harm. He cannot be held for the level of performance of his products in the consumer's business unless he agrees that the product was designed to meet the consumer's demands. A consumer should not be charged at the will of the manufacturer with bearing the risk of physical injury when he buys a product on the market. He can, however, be fairly charged with the risk that the product will not match his economic expectations unless the manufacturer agrees (by contract) that it will. Even in actions for negligence, a manufacturer's liability is limited to damages for physical injuries and there is no recovery for economic loss alone. Seely v. White Motor Company, 403 P.2d at 151.

Rolland can be fairly charged with a duty to members of the public to discharge his undertakings consistent with prevailing standards of professional care. The architect can likewise be held to a duty of care consistent with the risks of injury to the tangible property of those involved in the construction process as well as the public at large. Whether the plans and specifications and supervision meet the economic expectations of contractors, subcontractors, suppliers and others is dependent entirely upon considerations unknown and indeed unknowable to the architect. Rolland's liability for economic loss only occasioned by negligent preparation of the plans and specifications and by improper supervision is to CDU.

While certain jurisdictions have apparently held otherwise, it is still safe to say that in the vast majority of jurisdictions, a general contractor has no basis for a cause of action in tort (or anything else) against an architect.

In commenting upon this situation in an article entitled "Architect's Tort Liability in Preparation of Plans and Specifications," the author says:

> Although intangible economic loss is perfectly foreseeable, and even though it may be more injurious than damage to tangible property, most courts will probably follow the majority rule with regard to suppliers of chattels and deny recovery for economic loss, finding no reasonable distinction between suppliers of chattels and professionals like the architect. "'Architects' Tort Liability in Preparation of Plans and Specifications" 55 Cal. L. Rev. 1361 (1967).

Three Pennsylvania trial Court opinions are commented upon in an article by John R. Clarke in the June, 1969 edition of Professional Engineer entitled "The House of Privity Still Stands."

In Holly Construction Company v. Pottsgrove School Authority, C. P. Mont Co., 1968 Term., No. 9901; a general contractor sued the architect whose demurrer was sustained. Apparently the general attempted to elude the absence of privity by claiming to be a third party beneficiary to the contract between the architect and owner. It does not appear that there were allegations of negligence.

In Miniscalo Bros. v. Albright & Friel, C. P. No. 6 of Phila. Co., March Term 1966, No. 5443, the contractor again sued

the architect alleging defects in the plans upon which he relied and was damaged. A motion to dismiss was sustained in favor of the architect. Again, although the allegations of defect and reliance were similar to those in our case, it appears that the plaintiff attempted recovery in contract.

Such was not the case in Community Bank and Trust Co. v. L. Bauer, Jr., Court of Common Pleas, November Term 1967, No. 94. There the owner sued a subcontractor for alleged negligence which resulted in a fire. The electrical subcontractor attempted to bring in the design professional as an additional defendant. The Court there held that no negligence action was maintainable against the architect in the absence of privity of contract.

Directly on point is Blecick v. School District No. 18 of Cochise County, 2 Ariz. App. 115, 406 P.2d 750 (1965). In that case the general contractor attempted to recover directly from the architect on theories of tort, contract and warranty. The architect moved to dismiss the complaint for failure to state a claim upon which relief could be granted. That motion was granted. The Court of Appeals affirmed. A dearth of authorities was recognized by the Court in Blecick.

> There is no single case among all those cited to us, nor has independent research disclosed any, which holds that the architect is directly liable to the contractor for the defective plans and specifications. Blecick v. School District No. 18 of Cochise County, (supra at 755).

Valley's reliance upon Rolland's negligence in supervising the construction of the Project deserves further attention. This interesting theory assumes that the Project was improperly constructed by Valley and that the poor workmanship of Valley could

have been prevented by Rolland. Since the architect is employed by the owner to protect it from improper construction by the contractor, it is novel indeed for a contractor to predicate its recovery upon the architect's failure to prevent the contractor's own nonfeasance.

The Amended Third-Party Motion for Judgment also fails to state a cause of action because it alleges an absolute defense to the negligence allegations on its face. Allegations of improper construction and construction in an unworkmanlike manner constitute admissions of the contributory negligence of the defendant and third-party plaintiff, as a matter of law.

Valley's theory of negligent supervision can only be based on the premise that Rolland failed to maintain his neutrality in construing plans and specifications and in settling disputes of ODU or Valley arising in connection with the execution of the work on the Project. One of the conditions of the Contract between ODU and Valley stated that the architect was to resolve disputes arising between the owner and the contractor. Apparently, Valley believes Rolland's decisions in this connection so benefited ODU and so increased Valley's expenses that Valley's performance of its contract with ODU was significantly impaired. However, in performing this function, an architect is immune from liability in the absence of a conspiracy between the architect and ODU:

> "'The rule seems to be well settled that an architect who by agreement between the owner and the contractor is empowered to resolve disputes arising between them acts, in resolving such disputes, as a quasi-arbitrator. As a quasi-arbitrator he performs what is usually referred to as a "quasi-judicial' function - whatever that may mean - and is clothed with

> an immunity, analogous to judicial immunity, against actions brought by either of the parties arising out of his performance of his quasi-arbitrator's duties.'" Blecick v. School District, supra, at 755-756, quoting from Craviolini v. Scholer & Fuller, Associated Architects, 89 Ariz. 24, 27, 357 P.2d 611, 613 (1961).

Absent allegations of a conspiracy between Rolland and ODU against Valley to interfere with the contractual relations between Valley and ODU, the acts which Rolland is charged with were within the scope of his role as arbitrator. Since Valley does not make any allegations of conspiracy or any other actionable claim in its Amended Third-Party Motion for Judgment, there is no cause of action upon which relief may be granted and the Amended Third-Party Motion for Judgment should be dismissed.

b. Valley is not a third-party beneficiary of the contract between ODU and Rolland.

Valley is not a third-party beneficiary of the contract between Rolland and ODU. §55-22 Code of Virginia requires that a covenant or promise be made "for the benefit, in whole or in part, of a person with whom it is not made," in order for that person to enforce the obligation. The test is not whether enforcing the contract would benefit the third party. The issue is whether it was the intention of the makers of the contract to benefit the third party. McCloskey & Company, Inc. v. Wright, 363 F. Supp. 223 (E.D. Va. 1973).

In Graybar Electric Company v. Doley, 273 F.2d 285 (1959), the contract between the shareholders and the corporation, had it been enforceable, would have greatly benefited the corporation's creditors. It is perfectly obvious that the shareholders anticipated the existence of creditors at the time the contract was made. Nevertheless, the creditors were held not to be third-

party beneficiaries of the contract.

Contracts between owners and architects are not made for the benefit of contractors. One of the paramount obligations of the architect in performing the contract is protecting the owner from the contractor. For that purpose the architect is the owner's agent. While vigilence of the architect frequently assists the contractor in avoiding costly errors, his obligations run to the owner, not to the contractor.

c. No warranties exist between Rolland and Valley.

Valley alleges in Paragraph 5 of its Amended Third-party Motion for Judgment that Rolland warranted and represented that his plans and specifications would be adequate and correct and that he was competent and capable of maintaining a position of neutrality and of properly supervising the work. Valley then suggests that Rolland breached these warranties and in so doing caused damage and hardship to Valley.

The theory of breach of warranty is not supported by the pleadings. Valley was not a party to the agreement between the architect and ODU. Recovery for breach of warranty on behalf of one not a party to the agreement is contrary to the law of Virginia where the manufactured product is not inherently dangerous. General Bronze Corporation v. Kostopulos, supra. "A product is inherently dangerous when the danger of injury stems from the product itself, and not from any defect in it." General Bronze Corporation, supra at 70. Certainly there is nothing inherently dangerous about the plans in question and they do not fall within this classification. Sufficient argument has dealt with this point in subparagraph 2a above.

Clearly there was no express warranty running between Rolland and Valley, and none has been alleged.

The issue arises, however, whether, under Virginia law, implied warranties arise from the performance of architectural services and run to others than the owner. The clear answer is no.

It is well settled that an architect, in the preparation of plans and drawings, owes to his employer the duty to exercise his skill and ability and his judgment and taste reasonably without neglect. Surf Realty Corp. v. Standing, 195 Va. 431, 78 S.E. 2d 901 (1953). Under the law of Virginia, an architect or engineer, like a physician or an attorney, undertaking a job does not impliedly warrant or guarantee a perfect plan or a satisfactory result in the absence of a special agreement. He only impliedly warrants in his contract of employment that he possesses the necessary competence and ability to enable him to fulfill his obligations with a reasonable degree of technical skill. Surf Realty Corp. v. Standing, supra; C. W. Regan, Inc. v. Parsons, Brickerhoff, Quade and Douglas, supra.

No special agreement having been made by Rolland with ODU, the undertaking did not imply or guarantee to ODU a perfect plan or satisfactory result. A fortiori, a perfect plan or satisfactory result was not implied or guaranteed to Valley.

3. Valley May not Maintain a Third-Party Claim Against Rolland.

There is no theory of law to support a third-party claim against Rolland by Valley for breach of his warranties. The tort allegations contained in the Amended Third-Party Motion for

Judgment, are sufficient to support a third-party claim only: (1) if they state facts giving rise to contribution among joint tort feasors, or (2) if the facts alleged support indemnity. Neither theory is supportable under the facts alleged. Thus, Valley cannot as a matter of law recover under any theories for breach of warranty.

Does the Amended Third-Party Motion for Judgment sufficiently allege facts upon which indemnity over against Rolland may be obtained? Absent warranties, the facts alleged are clearly insufficient. Simply stated, there is no way that a contractor may be held liable to the owner for acts or omissions of the owner's architect. The contingent liabilities of the two are separate and distinct, not concurrent as would be required for vicarious liability to arise.

The right of contribution among joint tort feasors is established pursuant to Section 8-627, Code of Virginia (1950). This statute gives a right of contribution only where the concurring negligence of both parties must have contributed to bring about the injury sustained by a third. See North River Insurance Co. v. Davis, 274 F. Supp. 146 (W.D. Va. 1967). In the case at hand, this means that in order for Valley to have a right of contribution against Rolland, both Valley and Rolland must have been negligent in injuring ODU. However, in its Motion for Judgment, ODU does not allege that Valley was negligent. ODU alleges only that Valley breached its contract with ODU. Therefore, since the principal action is not in tort, Valley is not a tort feasor. There can be no contribution between a tort feasor and one who breaches a contract. For Valley to be success-

ful on a claim for contribution, it would have to affirmatively allege its liability to the plaintiff, which it has not done in any pleadings submitted to this point.

Indemnity is the final theory upon which Valley may successfully maintain a third-party action under Rule 3:10 of the Rules of the Supreme Court of Virginia. This rule does not permit the impleader by one defendant of parties alleged to be liable to the plaintiff instead of the third-party plaintiff. The right of indemnification may arise by an express contractual obligation or by rights under common law restitution principles. Since, as previously indicated above, there is no contract alleged between Valley and Rolland, Valley has no rights under contract to be indemnified by Rolland and Valley cannot maintain a third-party action upon a theory of contract indemnification. Recovery among joint tort feasors, absent contract, is limited to contribution. See Hartford Accident and Indemnity Company v. Williams, 291 F. Supp. 103 (W.D. Va. 1968).

Although there is no express contract of indemnity, common law tort principles hold that a primary or principle wrongdoer is responsible for his negligent act not only to the party directly injured, but also to one indirectly harmed. Under this doctrine, often referred to as the "active-passive" theory of indemnification, Hartford Accident and Indemnity Company v. Williams, 291 F. Supp. 103 (E.D. Va. 1968), a tort feasor whose negligence is only "passive" can be indemnified by a co-tort feasor only if the latter is guilty of "active" negligence. Banks v. Central Hudson Gas & Electric Corporation, 224 F.2d 631 (2nd. Cir. 1955). Since the principal action in the Motion

for Judgment is not in tort and since Valley has not affirmatively alleged any liability whatever to ODU, Valley, as the third-party plaintiff will not be allowed a recovery based on common law indemnity principles grounded in the active-passive negligence theory.

CONCLUSION

For the reasons herein contained, the third-party defendant, Peter G. Rolland, herein respectfully requests that his demurrer be granted and that this action as to him be dismissed.

Peter G. Rolland

By_____
Of Counsel

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum was mailed, postage prepaid, to all counsel of record, on the _____ day of _____, 1976.

_____

MEMORANDUM OF AUTHORITIES IN OPPOSITION OF THE DEFENDANT'S DEMURRER

Preliminary Statement

Third-party plaintiff Valley Landscape Company (Valley) is in general agreement with the preliminary statement of facts as set forth in the memorandum of third-party defendant Peter G. Rolland and Associates (Rolland) therefore it will not repeat these facts herein.

Valley contends that there is only one issue before the Court on this demurrer, that is, whether Valley is entitled in law to relief if the facts pleaded in the Third-Party Motion for Judgment are proved. However, Valley will address each of the issues raised by the defendant's memorandum.

Issues

1. Should the Amended Third-Party Motion for Judgment be dismissed for misjoinder of causes of action?

Rolland's assertion that Valley has improperly joined causes of action in tort and contract is without foundation. As Rolland notes, Valley takes the position that Rolland breached its contract with the plaintiff, Old Dominion University (ODU), and that Valley is a third-party beneficiary to that contract. Every paragraph in the Amended Third-Party Motion for Judgment flows from and lends support to this theory.

To summarize, without repeating every paragraph of the Motion, Valley alleges that Rolland contracted with ODU, that Valley was a third-party beneficiary of this contract, that Rolland breached this contract, and that this breach of contract caused

damage to Valley. There is no misjoinder of tort and contract.

Rolland contends that Valley has alleged a breach of warranty sounding in tort and cites du Pont Co. v Universal Moulded Products, 191 Va. 525 (1950). However, the Court in du Pont does not so hold. The du Pont decision must be limited to its facts. In du Pont, the plaintiff alleged that du Pont had furnished paint materials with express warranty of uniformity and an implied warranty of fitness and made fraudulent misrepresentations about the materials. On the facts the Court concluded that the demands were of the same nature and closely related since each arose out of the same general cause of action and in a continuous course of dealing with one subject, there was thus no misjoinder.

However, the Court in du Pont noted that breach of warranty can also sound in contract. Quoting from 4 Williston, Contracts §970 at 2689-90 (Rev. Ed. 1936), the Court said:

> "The law of warranty is older by a century than special assumpsit, and the action on the case on a warranty was in part the foundation of the action of assumpsit. An action on a warranty was regard for centuries as an action of deceit, and it was not until 1778 that the first reported decision occurs of an action in assumpsit on a warranty. And it is still generally possible where a distinction of procedure is observed between actions of tort and of contract to frame the declaration for breach of warranty in tort..."

Further, from 1 Williston, Sales (Rev. Ed.) section 195, page 502, the Court quoted:

> It is probable that today most persons instinctively think of a warranty as a contract or promise; but it is believed that the original character of the ac-

> tion cannot safely be lost sight of, and that the seller's liability upon a warranty may sound in tort as well as in contract. (emphasis added)

Valley has alleged only one theory of recovery - that Rolland breached its contract, part of this breach consisted of a breach in warranty. There is only a contract action and therefore no misjoinder of tort and contract.

2. Valley rejects the notion that its claim against Rolland is divisible in the manner suggested, nevertheless, we shall address each of the issues raised by Rolland's memorandum.

a. The contention that Rolland owes no duties to Valley.

Although the Supreme Court of Virginia has not directly addressed the question of an architect's duties to a general contractor, cases from other jurisdictions clearly recognize that even absent a direct contractual relationship between them, the architect has definite responsibilities running to the general contractor. Moreover, a Fourth Circuit case applying Virginia law which was cited by Rolland clearly indicates that an architect can be liable to persons with whom he has not contracted directly.

In Regan, Inc. v. Parsons, Brinckerhoff, Quade and Douglas, 411 F.2d 1379, 1387 (4th Cir. 1969), the Court said:

> It is no doubt true that engineers and architects have a duty of care in drawing plans and in carrying out duties they have accepted. It is possible, of course, for an engineer to assume such sweeping duties of supervision and control over all details of construction that nothing else appearing he may be held to have assumed a duty to parties outside his contract.

Courts in other jurisdictions have recognized the architect's responsibility to contractors and sureties. In Hall v. Union Indemnity Co., 61 F.2d 85 (8th Cir. 1932), the surety recovered against the architect. This court held that the surety had a right to rely on the owner and its agent architect to carry out the terms of the contract requiring paid invoices before certifying payment requests to the owner. A similar case by a surety against the architect is National Surety v. Malvaney, 221 Miss. 190, 72 So. 2d 424 (1954).

Other cases allowing recovery have emphasized the mutually interdependent obligations and rights between the architect, the owner, the contractor and the surety. Peerless Insurance Co. v. Cerny & Associates, Inc., 199 F. Supp 951, 955 (D. Minn. 1961). In U. S. v. Rogers & Rogers, 161 F. Supp. 132 (S.D. Calif. 1958), where a contractor was allowed damages for the architect's negligent supervision, the Court stated the nature of the relationship between the architect and the contractor as follows:

> Considerations of reason and policy impel the conclusion that the position and authority of a supervising architect are such that he ought to labor under a duty to the prime contractor to supervise the project with due care under the circumstances, even though his sole contractual relationship is with the owner, ... Altogether too much control over the contractor necessarily rests in the hands of the supervising architect for him not to be placed under a duty imposed by law to perform without negligence his functions as they affect the contractor. It is only just that such authority, exercised in such a relationship, carry commensurate legal responsibility.

For additional cases supporting Valley's position, see

Westerhold v. Carroll, 419 S.W. 2d 73 (1967); Aetna Insurance Co. v. Hellmuth Obata & Kassabaum, Inc., 392 F.2d 472 (8th Cir. 1968); and Miller v. DeWitt, 208 N.E. 2d 249 (Ill. App. 1965).

Plaintiff relies on several unreported decisions from Pennsylvania trial courts. These cases provide no controlling authority for the court in Pennsylvania and certainly cannot control this Virginia court's decision on this demurrer.

Plaintiff further relies on an Arizona case, Blecick v. School District No. 18, 2 Ariz. App. 115, 406 P. 2d 750 (1965). The facts of that case, however, are not in point. In that case, the contractor attempted to recover from the architect payments that the owner had wrongfully withheld. Here, Valley does not seek such relief, rather Valley seeks indemnification exoneration from any liability found against it where this liability could only be attributed to the architect's failures.

Clearly, an architect owes duties to a contractor and here Rolland has breached those duties to Valley.

b. The contention that Valley is not a third-party beneficiary of the contract between ODU and Rolland.

There can be no question that Valley is a third-party beneficiary of the contract between Rolland and ODU. What could be more obvious and foreseeable than the presence of a General Contractor in the construction contract and the associated contract between the architect and the owner. The specifications written by the architect himself are replete with references to the contractor. It is clear that the intent of the owner and the architect in making their contract is to benefit the contractor.

The courts have taken cognizance of the fact that the

end and aim of certain provisions in the contract documents are for the benefit of third parties. For example, the provisions with respect to payments are obviously intended to benefit the surety. Westerhold v. Carroll, 419 S.W. 2d 73 (1967); Hall v. Union Indemnity Co., 61 F.2d 85 (1932). Likewise the obligations of the architect to provide plans and specifications and to supervise the work are intended to benefit the contractor.

c. The contention that no warranties exist between Rolland and Valley.

Valley does not assert that Rolland guaranteed a perfect plan. Nevertheless, an architect is required by law in Virginia to exercise his skill, taste and judgment in the preparation of plans and drawings reasonably and without neglect. Surf Realty Corp. v. Standing, 195 Va. 431 (1953). Valley's Amended Third-Party Motion for Judgment contains allegations sufficient to withstand a demurrer. By his demurrer Rolland admits that the specifications and plans were inadequate and incorrect, he admits that he was incompetent and he admits failure to properly supervise the project. These facts if proved at trial would be sufficient to constitute a breach of Rolland's architectural contract to which Valley was a beneficiary.

3. May Valley maintain a Third-party claim against Rolland?

The facts alleged in Valley's Amended Third-Party Motion for Judgment are clearly sufficient to state a cause of action. Rolland has breached its contract for architectural services and Valley is a third-party beneficiary of this contract. If it is found that Valley breached the contract with ODU for con-

struction of this project and ODU sustained a loss, the cause of that breach and that loss lies with Rolland and Rolland is the party who ought to bear the loss. There can be no clearer case for indemnity.

Conclusion

The demurrer of the third-party defendant, should be overruled.

VALLEY LANDSCAPE COMPANY, INC.
MARYLAND CASUALTY COMPANY

By: Anita O. Poston
Of Counsel

Vandeventer, Black, Meredith & Martin
2050 Virginia National Bank Building
Norfolk, Virginia 23510

Certificate of Service

I certify that on Feb 26, 1976
I mailed or delivered a true copy of the foregoing pleading(s) to each counsel of record.

AOPoston

O R D E R

On February 27, 1976, came the defendant and third-party plaintiff, Valley Landscape Company, Inc., and the third-party defendant, Peter G. Rolland, by counsel, and argued to the Court the Demurrer filed by the third-party defendant to the Amended Third-Party Motion for Judgment. And the Court being of the opinion that the Amended Third-Party Motion for Judgment fails to state sufficient facts which, if true, would entitle the defendant and third-party plaintiff to a judgment against the third-party defendant. It is therefore ORDERED that the Demurrer is hereby sustained and that this action as to the third-party defendant Peter G. Rolland be, and the same hereby is, dismissed, to which action on the part of the Court the defendant and third-party plaintiff, by counsel, objects.

ENTER: / /

Edward L. Ryan, Jr., Judge
Judge

A COPY, TESTE: HUGH L. STOVALL, CLERK
BY R. L. Powell, D. C.

Seen:

Edward L. Ryan, Jr., Judge

Counsel for Peter G. Rolland

Seen and Objected to:

Counsel for Valley Landscape Company, Inc.

FORM OF AGREEMENT

This agreement entered into this 21st day of May 19 73, by Valley Landscape Co., Inc., Baltimore, Maryland, hereinafter called the "Contractor" and Old Dominion University, Norfolk, Virginia hereinafter called the "Owner".

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

Statement of work: The Contractor shall furnish all labor and materials and perform all work for the construction of the Mall Improvement Project.

in strict accordance with the specifications dated April, 19 73, ~~for~~ including Addendum #1 dated May 1, 1973, Addendum #2 dated May 7, 1973, and Mailgram dated May 7, 1973.

and the drawings listed therein, all of which are made a part hereof.

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 425 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 Four hundred sixty seven thousand, one hundred thirty Dollars ($467,130.)

Base Bid	$457,750
Alternate 1a	9,380
Contract Sum	$467,130

In Witness whereof, the parties hereto on the day and year first above written have executed this agreement in 7 counterparts, each of which shall, without proof or accountancy for the other counterparts, be deemed an original thereof.

ATTEST:

Carrie V. Ruff

Secretary

Valley Landscape Co., Inc.
(Contractor)

By: [illegible] Vice-President

6247 Falls Road
Baltimore, Maryland 21298
(Business Address)

ATTEST:

[illegible]

Assistant Director

Old Dominion University, Norfolk, Virginia
(Owner)

By: [illegible]

Director of Administration
(Official Title)

COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS OF THE CONTRACT FOR CAPITAL OUTLAY PROJECTS

INDEX

Section No.	Title
1.	Definitions
2.	Contract Documents
3.	Regulations Governing Contractors
4.	Laws, Permits and Regulations
5.	Conditions at Site or Structure
6.	Explanation to Bidders
7.	Preparation and Submission of Bids
8.	Bid Guarantee
9.	Withdrawal or Modification of Bids
10.	Receipt and Opening of Bids
11.	Errors in Bids
12.	Rejection of Bids
13.	Standard Forms for Agreement, Bonds, etc.
14.	Award of Contract
15.	Contract Security
16.	Subcontracts
17.	Separate Contracts
18.	Contractor's and Subcontractor's Insurance
19.	Insurance for Owner and Contractor
20.	Taxes
21.	Patents
22.	Architect's and Engineer's Status (Supervision, Interpretation and Decisions)
23.	Access to Work
24.	Inspection
25.	Drawings and Specifications
26.	Detail Drawings and Instructions
27.	Surveys and Layouts
28.	Arbitration
29.	Superintendence by Contractor
30.	Materials, Services and Facilities
31.	Contractor's Title to Materials
32.	Materials and Workmanship
33.	Samples
34.	Equals
35.	Availability of Materials
36.	Schedule of Values
37.	Payments to Contractor
38.	Payments by Contractor
39.	Assignments
40.	Use of Premises and Removal of Debris
41.	Temporary Roads
42.	Signs
43.	Accident Prevention
44.	Protection of Work and Property
45.	Climatic Conditions
46.	Shop Drawings
47.	Changes in the Work
48.	Extras
49.	Contractor's Right to Stop Work or Terminate Contract
50.	Owner's Right to Terminate Contract
51.	Extension of Time; Damages for Delays
52.	Final Inspection
53.	Guarantee of Work

1. Definitions

(a) The term "Owner" shall mean the Commonwealth of Virginia through the Governing Body, the Board, the Building Committee or other agent with authority to execute the capital outlay program for the institution or agency involved.

(b) The term "Contractor" means the person, firm or corporation named as such in the agreement and includes the plural number and the feminine gender when such are named in the agreement as the Contractor.

(c) The term "Subcontractor" includes only those having a direct contract with the Contractor and it includes one who furnishes material worked to a special design but does not include one who merely furnishes material not so worked.

(d) The term "Architect or Engineer," unless otherwise specified in the agreement, shall mean the Architect or the Engineer, as the case may be, named in the agreement as the party who prepared the specifications and plans for the work to be performed.

(e) The "Resident Inspector or Clerk of the Works" shall mean one or more individuals employed or designated by the Owner to make inspections during the construction of the project. The Owner shall notify the Contractor in writing of the appointment of such Resident Inspector or Clerk of the Works.

(f) The term "Work" of the Contractor or Subcontractor includes labor or materials or both.

(g) The term "Notice" as used herein shall include 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 mail box.

2. Contact Documents

(a) The Contract Documents consist of the agreement, the General Conditions, the specifications and drawings including all modifications thereof incorporated in the documents before their execution. These form the Contract. 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.

(b) All time limits stated in the Contract Documents are of the essence of the Contract.

(c) The Contract Documents shall be signed by the Owner and Contractor in as many original counterparts as may be mutually agreed upon.

(d) In case of conflicts, the Contract Documents shall take precedence in the following order: the agreement; the General Conditions; the specifications; and the drawings.

(e) The term "specifications" as used herein shall not be deemed to include the term "agreement" or "General Conditions" as used herein.

3. Regulations Governing Contractors

All Contractors and Subcontractors must comply with the Virginia Contractor's Registration Law, Title 54, Chapter 7, Code of Virginia 1950 as amended. (See Section 7 for further explanation.) All nonresident Contractors and Subcontractors bidding on the work described herein shall register with the Department of Labor and Industry under the provisions of Section 40.1-30 of the Code of Virginia.

4. Laws, Permits and Regulations

(a) The Contractor shall obtain and pay for all fees and charges for connection to outside service and use of property other than the site of the work for storage of materials and other purposes.

(b) The Contractor shall comply with all laws, ordinances, regulations and building code requirements applicable to the work unless in conflict with the provisions of the Contract Documents. If the Contractor ascertains at any time that any provisions of this Contract are at variance with applicable laws, regulations or building code requirements, he shall promptly notify the Architect or Engineer and any necessary adjustment of the Contract shall be made as specified under "Changes in the Work," Section 47. (Local building codes and ordinances do not customarily apply to State projects.)

(c) This Contract and all other contracts or subcontracts are subject to the provisions of Articles 3 and 5, Chapter 4, Title 40, Code of Virginia of 1950, as amended, and all Contractors or Subcontractors whether residents or nonresidents of the State who perform any work related to the project shall comply with all of said provisions, which read as follows:

40.1-58 It is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization.

40.1-59 Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy and an illegal combination or conspiracy.

40.1-60 No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

40.1-61 No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment.

40.1-62 No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

40.1-63 Any person who may be denied employment or be deprived of continuation of his employment in violation of §§ 40.1-60, 40.1-61 or 40.1-62 or of one or more of such sections, shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this Commonwealth such damages as he may have sustained by reason of such denial or deprivation of employment.

40.1-64 The provisions of this article shall not apply to any lawful contract in force on April thirty, nineteen hundred forty-seven, but they shall apply in all respects to contracts entered into thereafter and to any renewal or extension of an existing contract.

40.1-65 Any agreement, understanding or practice which is designated to cause or require any employer, whether or not a party thereto, to violate any provision of this article is hereby declared to be an illegal agreement, understanding or practice and contrary to public policy.

40.1-66 Any person, firm, association, corporation, or labor union or organization engaged in lockouts, layoffs, boycotts, picketing, work stoppages or other conduct, a purpose of which is to cause, force, persuade or induce any other person, firm, association, corporation or labor union or organization to violate any provision of this article shall be guilty of illegal conduct contrary to public policy; provided that nothing herein contained shall be construed to prevent or make illegal the peaceful and orderly solicitation and persuasion by union members of others to join a union, unaccompanied by any intimidation, use of force, threat of use of force, reprisal or threat of reprisal, and provided that no such solicitation or persuasion shall be conducted so as to interfere with, or interrupt the work of any employee during working hours.

40.1-67 Any employer, person, firm, association, corporation, labor union or organization injured as a result of any violation or threatened violation of any provision of this article or threatened with any such violation shall be entitled to injunctive relief against any and all violators or persons threatening violation, and also to recover from such violator or violators, or person or persons, any and all damages of any character cognizable at common law resulting from such violations or threatened violations. Such remedies shall be independent of and in addition to the penalties and remedies prescribed in other provisions of this article.

40.1-68 Any labor union or labor organization doing business in this State, all of whose officers and trustees are nonresidents of this State, shall by written power of attorney, filed with the Department of Labor and Industry and the State Corporation Commission, appoint the clerk of the State Corporation Commission its attorney ar agent upon whom all legal process against the union or organization may be served, and who shall be authorized to enter an appearance on its behalf. The manner of service of process on the clerk of the State Corporation Commission, the mailing thereof to the labor union or organization, the fees therefor, the effect of judgments, decrees and orders, and the procedure in cases where no power of attorney is filed as required, shall be the same as provided for in cases of foreign corporations.

40.1-69 Any violation of any of the provisions of this article by any person, firm, association, corporation, or labor union or organization shall be a misdemeanor and punishable by fine not exceeding five hundred dollars. Each day of continued violation after conviction shall constitute a separate offense and shall be punishable as herein provided.

40.1-76 Every labor union, labor association or labor organization doing business in this State whether it be an affiliate of an international, national or State labor organization or an independent organization, shall register once every three years with the Department not later than forty-five days after January first of each year registration is required. Registration shall be on forms furnished by the Department on request and include the following information:

(a) Name of the union, association or organization and business address thereof; and

(b) Name and address of the principal officers in the State of Virginia or the registered agent.

In addition to such triennial registration, each such union, association and organization shall notify the Department in writing within thirty days of any change in the officers designated on such registration form.

40.1-77 Any such union, association or organization failing to register as required by § 40.1-76 shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars nor more than five hundred dollars for such violation. Each year the union, association or organization fails to register shall constitute a separate violation.

The Contractor shall furnish the Owner copies of affidavits upon request giving the original dates, renewal dates and expiration dates of all labor contracts related to any phase of the work to be performed on the project site under this contract.

5. Conditions at Site or Structure

(a) Bidders should visit the site and shall be responsible for having ascertained pertinent local conditions such as location accessibility and general character of the site or building, the character and extent of existing work within or adjacent to the site. Claims, as a result of failure to do so, will not be considered by the Owner.

(b) If in performance of the Contract, subsurface or latent conditions at the site are found to be materially different from those indicated by the drawing and specifications, or unknown conditions of unusual nature are disclosed differing materially from the conditions usually inherent in work of the character shown and specified, the attention of the Architect or Engineer shall be called immediately to such conditions before they are disturbed. Upon such notice or upon his own observation of such conditions, the Architect or Engineer shall promptly make such changes in drawing and specifications as he finds necessary to conform to the different conditions, and any increase or decrease in the cost of the work resulting from such changes shall be adjusted as provided under "Changes in the Work", Section 47.

6. Explanation to Bidders

No oral explanation in regard to the meaning of drawings and specifications will be made and no oral instructions will be given before the award of contract. Discrepancies, omissions or doubts as to the meaning of drawings and specifications should be communicated in writing to the Architect or Engineer for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their bids. Any interpretation made will be in the form of an addendum to the specifications which will be forwarded to all bidders and its receipt by the bidder should be acknowledged on Bid Forms.

7. Preparation and Submission of Bids

(a) Bids shall be submitted on the forms furnished, or copies thereof, and shall be signed in ink. Erasures or other changes in a bid must be explained or noted over the signature of the bidder. Bids containing any conditions, omissions, unexplained erasures or alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the Owner as being incomplete.

(b) Each bid must give the full business address of the bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full name of all partners and must be signed in the partnership name by one of the members of the partnership or an authorized representative, followed by signature and designation of the person signing. Bids by corporations must be signed with the legal name of the corporation followed by the name of the State in which they are incorporated and by the signature and designation of the president, secretary, or other person authorized to bind it in the matter. The name of each person signing shall also be typed or printed below the signature. A bid by a person who affixes to his signature the word "President," "Secretary," "Agent," or other designation without disclosing his principal, may be held to be the bid of the individual signing. When requested by the Owner, satisfactory evidence of the authority of the officer signing in behalf of the corporation shall be furnished.

(c) Bids with the bid guarantee shall be enclosed in a sealed envelope which shall be marked and addressed as indicated by the advertisement. Bidders are required under Title 54, Chapter 7, Code of Virginia of 1950, as amended, to show evidence of certificate of registration before bid may be received and considered (1) on a general or subcontract of $30,000 or more, or (2) if the total value of all construction, removal, repair or improvements undertaken by such person within the next preceding twelve-month period is one hundred fifty thousand dollars ($150,000) or more. When a certificate of registration is required for either of the foregoing reasons, or, whether or not so required, if the bidder

is the holder of a certificate of registration, the bidder should place on the outside of the envelope containing his bid and shall place in his bid over his signature the following notation: "Registered Virginia Contractor No. ....." When a certificate of registration is not so required and a person who is not the holder of a certificate or registration enters a bid, such person shall place on the outside of the envelope containing his bid and shall place in his bid over his signature the following notation: "Registration not required under Title 54, Chapter 7, Code of Virginia of 1950, as amended."

8. Bid Guarantee

(a) Bids shall be accompanied by a bid guarantee of not less than five percent (5%) of the amount of the bid, which may be a certified check or cashier's check, or a Bid Bond made payable to the Owner. Such Bid Bond or check shall be submitted with the understanding that it shall guarantee that the bidder will not withdraw his bid during the period of thirty (30) days following the opening of bids; that if his bid is accepted, he will enter into a formal contract with the Owner in accordance with the Form of Agreement included as a part of the Contract Documents, and that the Standard Performance and Payment Bond will be given; and that in the event of the withdrawal of said bid within said period, or failure to enter into said contract and give said bonds within ten (10) days after he has received notice of acceptance of his bid, the bidder shall be liable to the Owner for the full amount of the bid guarantee as representing the damage to the Owner on account of the default of the bidder in any particular hereof. (See Chapter 4, Sections 11-18 and 19, Code of Virginia of 1950, as amended.)

(b) The Bid Bonds and checks shall be returned to all except the three lowest bidders after the formal opening of bids. The remaining Bid Bonds and checks will be returned to the lowest bidders after the Owner and the accepted bidders have executed the Contract and Performance Bonds have been approved by the Owner.

(c) If the required contract and bonds have not been executed within thirty (30) days after the date of the opening of the bids, then the bond or check of any bidder will be returned upon his request, provided he has not been notified of the acceptance of his bid prior to the date of such request.

9. Withdrawal or Modification of Bids

Bids may be withdrawn or modified by written or telegraphic notice received from bidders prior to the time fixed for bid opening. Negligence on the part of the bidder in preparing the bid confers no right for the withdrawal or modification of the bid after the time fixed for the bid opening has passed.

10. Receipt and Opening of Bids

Bids will be opened at the time and place stated in the invitation, and their contents made public for the information of bidders and others interested who may be present either in person or by representative. The officer or agent of the Owner, whose duty it is to open them, will decide when the specified time has arrived and no bids received thereafter will be considered. No responsibility, will be attached to any officer or agent for the premature opening of a bid not properly addressed and identified. It is the responsibility of the bidder to assure that his bid is delivered to the designated place for opening prior to the time set for opening of bids.

11. Errors in Bid

Obvious errors appearing on the face of any proposal must be brought to the attention of the Owner within seventy-two (72) hours of the time fixed for opening of bids (provided if such 72-hour period expires on a Saturday, Sunday, or any legal holiday within the meaning of Section 2.1-21 of the Code of Virginia, then such period shall be extended to the same time on the next day which is not a Saturday, Sunday, or such legal holiday), and be reconciled prior to the award of contract to the successful bidder in accordance with Section 8 of these General Conditions. Any claim for adjustment due to an obvious error will not be considered after the award of contract to the successful bidder.

12. Rejection of Bids

The Owner reserves the right to reject any and all bids when such rejection is in the interest of the Owner, and to reject the bid of a bidder who is not in a position to perform the contract. (See Chapter 4, Section 11-21, Code of Virginia 1950, as amended.)

13. Standard Forms for Agreement, Bonds, etc.

The copies of Form of Agreement, Standard Performance and Payment Bond, and Affidavit of Payments of Claims enclosed herewith are incorporated in these General Conditions by reference and are made a part hereof the same extent as though fully set forth herein.

14. Award of Contract

(a) The contract will be awarded as soon as possible to the lowest responsible bidder; provided his bid is reasonable and it is to the interest of the Owner to accept it.

(b) The Owner reserves the right to waive any informality in bids received when such waiver is in the interest of the Owner; also to accept any item in the bid unless otherwise specified by the Owner or the bidder.

(c) Each bidder shall be prepared, if so requested by the Owner, to present evidence of his experience qualifications and financial ability to carry out the terms of the contract.

15. Contract Security

(a) The successful bidder must deliver to the Owner an executed Standard Performance and Payment Bond with approved surety payment to the Commonwealth of Virginia (form attached) in the amount at least equal to one hundred percent (100%) of the accepted bid as guarantee for the faithful performance of the contract and the payment of all persons who have, and fulfill, contracts which are directly with the successful bidder. The sureties of all bonds shall be of such security company or companies as are approved by the Owner, and are authorized to transact business in the Commonwealth of Virginia. No contract shall be deemed to be in effect until the bond has been approved by the Owner and the Attorney General.

(b) The successful bidder (contractor) shall not subcontract any work required by the contract except under the following conditions:

Each Subcontractor shall furnish, and the Contractor shall require as a part of the agreement between the Subcontractor and the Contractor, a payment bond in the amount of 50% of the work sublet to the Subcontractor which shall be conditioned upon the payment of all persons who have and fulfill contracts, which are directly with the Subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the Subcontract. Every such bond shall be construed, regardless of its language, as incorporating, within its provisions, the obligation to pay those persons who furnish labor or materials as aforesaid; provided however, that Subcontracts between the Contractor and a manufacturer or a fabricator shall be exempt from the provision requiring a payment bond and provided further that Subcontracts for less than $2,500.00 each are also exempt hereunder. (See Chapter 4, Section 11-20, Code of Virginia 1950, as amended.)

16. Subcontracts

(a) The Contractors shall as soon as practical after the signing of the contract, notify the Architect or Engineer in writing of the names of Subcontractors proposed for the principal parts of the work and for such others as the Architect or Engineer may direct and shall not employ any that the Architect or Engineer may within a reasonable time object to as incompetent or unfit.

(b) The Architect or Engineer shall, on request, furnish to any Subcontractor, wherever practicable, evidence of the amounts certified on his account.

(c) The Contractor agrees that he is as fully responsible to the Owner for the acts and omissions of his Subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

17. Separate Contracts

The Owner reserves the right to let other contracts in connection with the project, the work under which will 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 and the Contractor shall take all reasonable action to coordinate his work with theirs. If the work performed by the separate contractor is defective or so performed as to prevent the Contractor from carrying out his work according to the plans and specifications, the Contractor shall immediately notify the Architect or Engineer upon discovering such conditions.

18. 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 and such insurance has been approved by the Owner; nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance has been so obtained and approved. Approval of the insurance by the Owner shall not relieve or decrease the liability of the Contractor hereunder.

(b) The Contractor shall take out and maintain during the life of this contract the statutory Workmen's Compensation and Employer's Liability Insurance for all of his employees to be engaged in work on the project under this contract and in case any such work is sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation and Employer's Liability Insurance for all of the latter's employees to be engaged in such work.

(c) The Contractor shall take out and maintain during the life of this contract such bodily injury liability and property damage liability insurance as shall protect him from claims for damages for personal injury, including death, as well as from 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, and the amounts of such insurance shall be not less than:

(1) Bodily Injury Liability Insurance, in the amount not less than Fifty Thousand Dollars ($50,000) for injuries, including death to any one person, and subject to the same limit for each person in an amount not less than One Hundred Thousand Dollars ($100,000) on account of one accident.

(2) Property Damage Insurance in the amount of not less than Twenty Thousand Dollars ($20,000) for damages on account of any one accident, and in amount not less than Fifty Thousand ($50,000) for damages on account of all accidents.

19. Insurance for Owner and Contractor

The Contractor, at his cost, shall effect and maintain in the names of the Owner and the Contractor, fire, vandalism and extended coverage insurance (or all-risk, builder's-risk insurance if approved by the Owner and the Director of the 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 and 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 specifications. The loss, if any, is to be made adjustable with and payable to the Owner as Trustee for whom it may concern. Written evidence of the insurance required herein shall be filed with the Owner not later than thirty (30) days following the date of the award of the contract. A copy of the evidence of insurance shall be filed with the Division of Engineering and Buildings. Certain projects may be excluded from the requirements of this paragraph upon recommendation of the Owner and approval of the Director of the Division of Engineering and Buildings if so provided in the specifications.

20. Taxes

The Contractor shall without additional expense to the Owner, pay all applicable Federal, State, local and other taxes, except taxes and assessments on the real property comprising the site of the project.

21. Patents

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 infrigement of any patent rights in connection with any invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless such invention, process, 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, article or appliance so specifically named in the specifications or drawings as acceptable for use in carrying out the work, the Contractor has information that the same is covered by letters patent making it necessary to secure the permission of the patentee, or other, for the use of the same, he shall so advise the Owner who may direct that some other invention, process, article or appliance be used.

22. Architect's and Engineer's Status (Supervision, Interpretation and Decisions)

(a) All work shall be done under the supervision of the Architect or Engineer. All orders from the Owner shall be transmitted through him. He shall determine the amount, quality, acceptability and fitness of all parts of the work. He shall interpret the Contract Documents and extra Work Orders and he shall decide all other questions in connection with the work. He shall have authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the contract. The Architect or Engineer shall have no authority to approve or order changes in the work which alter the terms or conditions of the Contract. Upon request, the Architect or Engineer shall confirm in writing within 10 days any oral order, direction, requirement or determination.

(b) As the Architect or Engineer is, in the first instance, the interpreter of the conditions of the Contract and the judge of its performance, he shall side neither with the Owner nor with the Contractor, but

shall use his powers under the Contract to enforce its faithful performance by both. It shall be the responsibility of the Architect or Engineer to make decisions in regard to all claims of the Owner or Contractor and to interpret the Contract Documents on all questions arising in connection with the execution of the work. Such decisions and interpretations, together with the reasons therefor, shall be furnished in writing by the Architect or Engineer to the Owner and the Contractor within 10 days after a request is made therefor.

(c) Neither the Contractor nor the Owner shall be bound by any determination, interpretation or decision of the Architect or Engineer if it is later determined that the same is not in accord with the true intent of the Contract Documents. The party taking issue with the determination, interpretation or decision of the Architect or Engineer shall give the other party written notice of such fact within 10 days after the determination, interpretation or decision is rendered by the Architect or Engineer. It is the intent of this Section 22, however, that in the actual performance of the work, the Contractor shall, in the first instance, proceed in accordance with instructions given by the Architect or Engineer unless the Owner and the Contractor mutually agree that the Contractor shall proceed otherwise.

(d) In case of the termination of the employment of the Architect or Engineer, the Owner shall appoint a capable and reputable Architect or Engineer. The status under the Contract of the Architect or Engineer so appointed shall be that of the former Architect or Engineer.

23. Access to Work

The Architect or Engineer and the Owner shall have access at all times to the work for inspection wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and inspection.

24. Inspection

(a) All material and workmanship, if not otherwise designated by the specifications, shall be subject to inspection, examination and test by the Architect or Engineer at any and all times during manufacture and/or construction. The Architect or Engineer shall have the right to reject defective material and workmanship or 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 50, the Contractor and surety being liable for any damage to the same extent as provided in Section 50 for termination thereunder.

(b) The Contractor shall furnish promptly without additional charge all reasonable facilities, labor, and materials, necessary and convenient for making such tests as may be designated in the specifications.

(c) Should it be considered necessary or advisable by the Architect or Engineer at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall on request promptly furnish all necessary facilities, labor, and material. 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 such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the Contract, the actual cost of labor and material necessarily involved in the examination and replacement shall be allowed the Contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(d) The Project Inspector shall make no decisions as to changes in the plans and specifications or render any interpretation without the approval of the Architect or Engineer and the Owner, to be confirmed in writing. He may, with the written instruction of the Architect or Engineer and the Owner given in each particular instance, cause the work to be suspended when in their judgment the intent of the plans and specifications is not being followed. Any such suspension shall be continued only until the matter in question is settled to the satisfaction of the Owner. The cost of any such work stoppage shall be borne by the Contractor unless it is later determined by the Architect or Engineer or the Owner that no fault existed in the Contractor's work.

25. Drawings and Specifications

(a) The general character and scope of the work are illustrated by the drawings and specifications. Any additional detail and other information deemed necessary by the Architect or Engineer will be furnished to the Contractor when and as required by the work.

(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 shall be verified at the site by the Contractor. Do not scale measurements or dimensions from the drawings. Where there are discrepancies, the Architect or Engineer shall be consulted.

(g) The Contractor shall keep on the work a copy of the drawings and specifications including all authorized change orders, and shall at all times give the Owner, Architect or Engineer and their authorized representatives access thereto. All drawings and specifications, except the signed Contract, which remains available upon completion of the work shall be returned to the Architect or Engineer.

26. Detail Drawings and Instructions

(a) The Contractor will be furnished additional instructions and detail drawings as may be necessary to carry out the work included in the Contract. The additional drawings and instructions, thus supplied to the Contractor, shall be consistent with Contract Documents, 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) The Contractor and the Architect or Engineer shall prepare jointly:

(1) A schedule fixing the dates at which special detail drawings will be required; and

(2) A schedule fixing the respective dates for the submission of shop or setting drawings, the beginning of manufacture, testing and installation of materials, supplies and equipment and the completion of the various parts of the work, each such schedule to be subject to change from time to time in accordance with the progress of the work.

27. Surveys and Layout

(a) The Owner, Architect or Engineer shall furnish all necessary drawings showing property lines and the location of the building. The Contractor shall provide competent engineering service to execute the work in accordance with the contract requirements and shall be responsible for the accuracy of his work.

(b) The Owner, Architect or Engineer has established or will establish such general reference points and bench marks on the building site as will enable the Contractor to proceed with the work. If the Contractor finds that any previously established reference points have been destroyed or misplaced, he shall promptly notify the Owner.

(c) The Contractor shall protect and preserve the established bench marks and monuments and shall make no changes in locations without the written approval of 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.

28. Arbitration

(a) If any dispute, claim or question arises under the Contract which cannot be settled by the Owner and the Contractor, the parties will in an effort to arrive at an amicable solution submit the matter to a board of three Arbitrators. One Arbitrator is to be selected by the Owner and one is to be selected by the Contractor. The two Arbitrators so selected shall select the third Arbitrator.

(b) Any decision rendered by the Board of Arbitrators shall be advisory only and not binding upon the parties.

(c) The Contractor shall not cause a delay in the work during the arbritration proceedings, except by agreement with the Owner.

(d) The costs of the arbitration shall be borne equally by the Owner and the Contractor.

29. Superintendence by Contractor

(a) The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent satisfactory to the Architect or Engineer and Owner, on the work at all times during progress of the work.

(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 or anyone not skilled in the work assigned to him.

30. Materials, Services and Facilities

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 and other services, and facilities of every nature whatsoever necessary to execute complete and deliver the work within the specified time.

31. 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 chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that he has good title to all materials and supplies for which he accepts partial payment.

32. Materials and Workmanship

Unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new. All workmanship shall be first class and by persons qualified in the respective trades.

33. Samples

The Contractor shall furnish for approval all samples as directed. The work shall be in accordance with approved samples.

34. Equals

(a) The name of a certain brand, make, manufacturer, or definite specifications is to denote the quality standard of article desired, but does not restrict bidders to the specific brand, make, manufacturer or specification named; it is to set forth and convey to prospective bidders the general style, type, character and quality of article desired.

(b) Whenever in these specifications or 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 of material, device or equipment which, in the opinion of the Architect or Engineer, is recognized the equal of that specified, considering quality, workmanship and economy of operation and is suitable for the purpose intended, must be accepted. (See Chapter 4, Section 11-23.1, Code of Virginia of 1950, as amended.)

35. Availability of Material

Where material herein specified is not available on the present market, alternate materials may be proposed for approval of the Owner at the time of signing the contract.

36. Schedule of Values

Before the first partial payment under the Contract becomes due, the Contractor and the Architect or Engineer shall prepare jointly a schedule of the estimated values of the main branches of the work, totaling the amount of the Contract. The values in the schedule will be used only for partial payments.

37. Payments to Contractor

(a) Unless otherwise provided in the specifications, the Owner will make partial payments to the Con-

tractor not later than the twentieth day of each calendar month on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month as approved by the Architect or Engineer, provided the Contractor has submitted his estimate by the fifth day of the month. In preparing estimates, the material delivered on the site and preparatory work done shall be taken into consideration.

(b) In making such partial payments, there shall be retained ten percent (10%) on the estimated amount until final completion and acceptance of all work covered by the contract, except as follows:

At such time as a project has reached the stage of substantial completion where the estimated cost of the remaining work is certified by the Architect or Engineer (substantiated by the Schedule of Values and Certificate of Payment) and approved by the Governor's Office as being less than ten percent (10%) of the amount of the total contract, and the project can be or has been beneficially occupied by the owner in accordance with applicable requirements of Section 53 (a) and the Contractor has shown satisfactory evidence of compliance with Section 37 (d), the retainage shall be reduced to not less than five percent (5%) for the period remaining until final acceptance.

(c) All material and work covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all materials and work upon which payments have 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.

(d) Neither the final payment nor any part of the retained percentage shall become due until the Contractor shall deliver to the Owner through the Architect or Engineer an Affidavit of Payment of Claims that all subcontractors and suppliers of either labor or materials have been paid all sums due them for work performed or materials furnished in connection with this contract or that satisfactory arrangements have been made by the Contractor with such subcontractors and suppliers with respect to the payment of such sums as may be due them by the Contractor.

(e) Upon completion of work required by Contract and acceptance of same by the Owner and the filing of the affidavit required in Section 37 (d), the Architect or Engineer shall file a written certificate with the Owner and with the Contractor as to the entire amount of work performed and compensation earned by the Contractor including extra work and compensation therefor.

(f) Within thirty (30) days after the filing of such certificate of completion, the Owner shall pay to the Contractor the amount therein stated, less all prior payments and advances whatsoever to or for the account of the Contractor. All prior estimates and payments including those relating to extra work shall be subject to correction by this payment, which is throughout this Contract called final payment.

(g) The acceptance by the Contractor of the final payment shall be and operate as a release to the Owner of all claims and of all liability to the Contractor for all things done or furnished in connection with this work excepting Contractor's claims for interest upon final payment, if this payment be improperly delayed. No certificate for payment issued by the Architect or 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 the 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 and Payment Bond.

38. 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) For all materials, tools and other expendable equipment to the extent of 90% of the cost thereof not later than the end of the calendar month following that in which such materials, tools and equipment are delivered at the site of the project; and

(c) To each of his subcontractors, not later than the end of the calendar month in which each payment is made to the Contractor, the representative amount allowed the Contractor on account of the work performed by his subcontractors, to the extent of each subcontractor's interest therein.

39. 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 monies due or to become due to him hereunder, without the previous written consent of the Owner.

40. Use of Premises and Removal of Debris

The Contractor expressly undertakes, either directly or through his subcontractor:

(a) To take every precaution against injuries to persons or damage to property;

(b) To comply with the regulations governing the operation of premises and to perform his contract in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or at the location of his work;

(c) To 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;

(d) To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;

(e) 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;

(f) To effect all cutting, filling or patching of his work required to make the same conform to the plans and specifications, and except with the consent of the Architect or Engineer not to cut or otherwise alter the work of any other contractor;

(g) Before final payment, to remove all surplus material, false work, temporary structures, including foundations thereof, plant 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 dustfree all finished surfaces including all equipment, piping, etc., on the interior of all buildings included in the contract; and to wash and polish all glass installed under the contract including the removal of all paint splatters and other defacements.

41. 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 as required by the drawings and specifications

42. Signs

The Contractor may, at his option and without cost to the Owner, erect signs 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.

43. Accident Prevention

Precaution shall be exercised at all times for the protection of persons, including employees, and property. The safety provisions of applicable laws and building construction codes shall be observed. 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.

44. Protection of Work and Property

(a) 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 as provided by law and the Contract Documents. He shall provide and maintain all passageways, guard fences, lights and other facilities for protection required by public authority, local conditions, or any of the Contract Documents.

(b) In an emergency affecting the safety of life, or of the work, or of adjoining property, the Contractor, without special instruction or authorization from the Architect, Engineer or Owner, is hereby permitted to act, at his discretion, to prevent such threatened loss or injury, and he shall so act, without appeal, if so instructed or authorized. Any compensation, claimed by the Contractor on account of emergency work, shall be determined by agreement.

(c) When necessary for the proper protection of the work, temporary heating or a type approved by the Architect or Engineer must be provided unless otherwise specified.

45. Climatic Conditions

When so ordered by the Architect or Engineer, the Contractor shall suspend any work that may be subject to damage by climatic conditions.

46. Shop Drawings

(a) The Contractor shall submit for the approval of the Architect or Engineer, shop and setting drawings and schedules required by the specifications or that may be requested by the Architect or Engineer and no work shall be fabricated by the Contractor, save at his own risk, until such approval has been given.

(b) Drawings and schedules shall be submitted in quadruplet (unless otherwise specified) accompanied by letter of transmittal which shall give a list of the numbers and dates of the drawings submitted. Drawings shall be complete in every respect and bound in sets.

(c) The Contractor shall submit all drawings and schedules sufficiently in advance of construction requirements to allow ample time for checking, correcting, resubmitting and checking.

(d) If a drawing, as submitted, indicates a departure from the contract requirements which the Architect or Engineer finds to be in the interest of the Owner and to be so minor as not to involve a change in the contract price or time for performance, he may approve the drawing.

(e) The approval of shop and setting drawings will be general and, except as otherwise provided in Section 46 (d) above, shall not be construed:

(1) As permitting any departure from the contract requirements;

(2) As relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist; and

(3) As approving departures from additional details or instructions previously furnished by the Architect or Engineer.

47. Changes in the Work

(a) The Owner may at any time (subject to prior approval of the change order by the Governor on changes costing in excess of $2,500, unless the work is of an emergency nature), by written order utilizing the Commonwealth of Virginia change order form, and without notice to the sureties, make changes in the drawings and specifications of this contract and within the general scope thereof except that no change will be made which will increase the total contract price to an amount more than 20 percent in excess of the original contract price without notice to sureties. 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) The order shall stipulate the mutually agreed price which shall be added or deducted from the contract price. If the price change is an addition to the contract price, it shall include the Contractor's overhead and profit.

(2) By estimating the number of unit quantities of each part of the work which is changed and then multiplying the estimated number of such unit quantities by the applicable unit price (if any) set forth in the contract or other mutually agreed unit price.

(3) By ordering the Contractor to proceed with the work and to keep and present in such form as the Owner may direct a correct account of the cost of the change together with all vouchers therefor. The cost shall include an allowance for overhead and profit to be mutually agreed upon by the Owner and the Contractor.

(b) The Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered.

(c) In figuring changes, instructions for measurement of quantities set forth in the specifications shall be followed.

(d) All change orders must indicate that the completion date of the project is either not extended or is extended by a specific number of days. The old and new date (if applicable) must be stated.

48. Extras

If the Contractor claims that any instructions, by drawings or otherwise, involve extra work not covered by the Contract, he shall give the Architect or Engineer and the Owner written notice thereof 10 days, after the receipt of such instructions and before proceeding to execute the work, except in emergencies, endangering life or property. If it is later determined that the work involved in such instructions shall be recognized as an extra, the amount of additional compensation to be paid therefor shall be determined by such one of the three methods provided in Section 47 for "Changes in the Work" as may be selected by the Owner. Except as otherwise specifically provided, no claims for extra work shall be allowed unless the notice specified by this section is given by the Contractor or unless such work is performed pursuant to the written order of the Owner as provided in Section 47.

49. Contractor's Right to Stop Work or Terminate Contract

If the work should be stopped under an order of any court or other public authority for a period of three months, through no act or fault of the Contractor or of anyone employed by him, or if the Architect or Engineer should fail to issue any certificate for payment within a reasonable time after it is due, or if the Owner should fail to pay to the Contractor within a reasonable time any sum certified by the Architect or Engineer, then the Contractor may, upon fourteen calendar days written notice to the Owner and the Architect or Engineer, stop work or terminate this Contract and recover from the Owner payment for all work executed, any loss sustained upon any plant or materials and any other proper item of damage.

50. Owner's Right to Terminate Contract

If the Contractor should be adjudged a 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, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workman or proper materials, or if he should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Architect or Engineer, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Owner, upon the certificate of the Architect or Engineer that sufficient cause exists to justify such action, may without prejudice to any other right or remedy, and after giving the Contractor and his surety fourteen calendar days' written notice, terminate the employment of the Contractor and 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. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Architect or Engineer.

51. Extention of Time; Damages for Delays

(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 amount set forth in the specifications as fixed, agreed and liquidated damages for each calendar day or delay until the work is completed, or, if liquidated damages are not so fixed, for any actual damages occasioned by such delay, provided that, unless otherwise specifically provided for in the specifications, if the Contractor be delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect or Engineer, or of any employee of either, or by any separate contractor employed by the Owner, or by changes ordered in the work, or by strikes, fire, unusual delay in transportation, unavoidable casualties or any other cause beyond the Contractor's control or by delay authorized by the Owner pending arbitration, or by any cause which the Architect or Engineer shall decide justifies the delay, then the time for completion shall be extended for such reasonable time as the Architect or Engineer may decide, and the Contractor shall not be charged with liquidated or actual damages during the period of such extension.

(b) No such extension shall be made for delay occurring more than 30 days before claim therefor is made in writing to the Architect or Engineer. In the case of a continuing cause of delay, only one claim is necessary.

(c) This section does not exclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

(d) Any change in the completion date shall be accomplished only by issuance of a change order.

52. Final Inspection

When the work is substantially completed, the Contractor shall notify the Owner in writing that the work will be ready for final inspection and test on a definite date which shall be stated in such notice. The notice shall be given at least ten (10) days in advance of said date and shall be forwarded through the Architect or 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 final inspection or test on the date given, but such endorsement shall not relieve the Contractor of his responsibility in the matter. The Contractor is required to furnish access for the final inspection as provided in Section 23.

53. 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 year from the date of final acceptance of the entire project by the Owner in writing, provided that if prior to the acceptance of the entire project the Owner occupies or uses any separate unit of the work, the guarantee period shall, as to the unit so occupied or used, commence on the date of such occupancy or use, with the further provision that the Owner shall have first agreed in writing that the separate unit is complete to such a

degree as to permit its use for occupancy. No such separate unit shall be occupied or used by the Owner until such certificate has been given. Equipment, which has seasonal limitations on its operation, shall be guaranteed for one full year from the date of test and acceptance in writing by the Owner.

(b) If, within any guarantee period, repairs or changes are required in connection with the guaranteed work, which in the opinion of the Architect or Engineer is 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 the Contract, the Contractor shall, promptly upon receipt of notice from the Owner and without expense to the Owner;

(1) Place in satisfactory condition in every particular all of such guaranteed work, 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 or 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 site disturbed in fulfilling any such guarantee.

(c) In any case, where in fulfilling the requirements of the Contract or of any guarantee embraced in or required thereby, the Contractor disturbs any work guaranteed under contract, he shall restore such disturbed work to a condition satisfactory to the Architect or 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 terms of this section during the first year of the life of such special guarantee.

COMMONWEALTH OF VIRGINIA

FORM OF AGREEMENT

This agreement entered into this_____day of_____

19____, by_____

_____, hereinafter called the "Contractor" and_____

_____

hereinafter called the "Owner".

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

Statement of work: The Contractor shall furnish all labor and materials and perform all work for_____

_____

in strict accordance with the specifications dated_____, 19_____

for_____

_____

_____

_____

and the drawings listed therein, all of which are made a part hereof.

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_____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 _____

_____ Dollars ($_____)

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

ATTEST:

_____ _____

_____

_____
(Contractor)

By: _____

_____
(Business Address)

ATTEST:

_____ _____

_____

_____
(Owner)

By: _____

_____
(Official Title)

COMMONWEALTH OF VIRGINIA

STANDARD PERFORMANCE AND PAYMENT BOND

Know all men: That we _____

_____

Principal, and _____

_____

_____

Surety, or Sureties, are held and firmly bound unto _____

_____

Owner, in the sum of _____

Dollars ($_____) for the payment thereof the Principal and the Surety or Sureties bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of written Agreement, dated _____

_____ entered into a contract with the Owner

for _____

_____

which agreement is by reference thereto hereby expressly made a part of this bond.

Now, therefore, the condition of this obligation is such that if the Principal shall faithfully perform the Contract on his part in strict conformity with the plans, specifications and conditions for the same and shall fully indemnify and save harmless the Owner from all cost and damage which he may suffer by reason of failure so to do, and shall fully reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any such default, and shall pay all persons who have and fulfill, contracts which are directly with the Principal for performing labor or furnishing materials in the prosecution of the work provided for in said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

Provided, that any alterations which may be made in the terms of the Contract, or in the work to be done under it, or the giving by the Owner of any extension of time for the performance of the Contract, or any other forbearance on the part of either the Owner or the Principal to the other shall not in any way release the Principal and the Surety or Sureties, or either or any of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety or Sureties of any such alterations, extension or forbearance being hereby waived.

Signed and sealed this _____ day of _____, 19_____.

Witness: _____ (Seal)
Principal

_____ By: _____

COUNTERSIGNED BY: _____ (Seal)
Surety

_____
Resident Virginia Agent

AFFIDAVIT AND ACKNOWLEDGMENT OF SURETY

STATE OF _____

_____ of _____, to wit:

I, _____, a notary public in and for the _____ aforesaid, in the State aforesaid, do certify that _____ personally appeared before me in my _____ _____ aforesaid and made oath that he is _____ of the _____ that he is duly authorized to execute the foregoing bond by virtue of a certain power of attorney of said company, dated _____ and recorded in the Clerk's Office of the _____ of _____, in Deed Book No. _____, page _____, that said power of attorney has not been revoked; that the said company is legally qualified to do business in Virginia; and that the said _____ thereupon, in the name and on behalf of the said company, acknowledged the foregoing writing as its act and deed.

My term of office expires _____, 19_____.

Given under my hand this _____ day of _____, 19_____.

_____
Notary Public

COMMONWEALTH OF VIRGINIA

AFFIDAVIT OF PAYMENTS OF CLAIMS

BY: _____

_____

_____

This day_____ personally appeared before me,_____, a Notary Public in and for the City (County) of_____, and, being by me first duly sworn states that all subcontractors and suppliers of labor and materials have been paid all sums due them for work performed or materials furnished in the performance of the Contract between the Commonwealth of Virginia,_____

_____, Owner, and_____

Contractor, dated_____, 19_____, for the construction of_____

_____,

or arrangements have been made by the Contractor satisfactory to such subcontractors and suppliers with respect to the payments of such sums as may be due them by the Contractor.

_____

BY:_____

TITLE:_____

Subscribed and sworn to before me this_____ day of_____, 19___.

My commission expires on the_____day of _____, 19___.

_____

Notary Public