

AGREEMENT FOR SERVICE

a Division of
CROM, LLC

THIS AGREEMENT is effective on the 11th day of March 2019 by and between the FAIRFAX COUNTY WATER AUTHORITY, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and CROM COATINGS AND RESTORATIONS, LLC, hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

JAH
04/02/19

WITNESSETH:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

The Contractor shall provide Concrete Restoration, and Repair services in accordance with the following, in order of precedence: this Agreement for Service ("Agreement" or "Contract"); the Contractor's proposal dated February 13, 2019 Attachment I); and FW's Request for Proposal dated January 17, 2019 (including all addenda) (incorporated by reference) (Attachment II). In the event that Exhibits I and II contradict or limit this Agreement for Service, this Agreement shall prevail.

No representations, arrangements, understandings or agreements relating to the subject matter exist amongst the parties except as expressed in this Agreement.

1.0 PROJECT SPECIFICATIONS AND RELATED REQUIREMENTS

1.1 Scope of Work

- A. Sikadur Combiflex SG Replacement: Remove and replace existing identified Sikadur-Combiflex SG System, with a new Sikadur-Combiflex SG System. The exposed underlying concrete shall be repaired based on the unit pricing for Concrete Crack Repair and Partial Depth Concrete Spall Repair in accordance with Items B and C below. The surface of the concrete shall be cleaned and prepared according to the specifications of the concrete repair material manufacturer, and the new Sikadur-Combiflex SG System shall be supplied and properly installed by the Contractor. The Sikadur-Combiflex SG System strips utilized shall be preapproved by FW Protective Coatings Supervisor for width and thickness. The Sikadur-Combiflex SG System shall be applied with Sikadur 31, Hi-Mod Gel adhesive, suitable for potable water contact. The system shall be applied in a workmanlike manner in accordance with the manufacturer's instructions. The quantity of total linear feet of Sikadur-Combiflex SG Replacement shall be paid for by the unit price per linear feet in accordance with Item 2 of Attachment I (Revised Bid Submission Form).
- B. Partial Depth Concrete Spall Repair: Any areas of unsound or deteriorated concrete, shotcrete, or other failed areas of concrete indicated by FW shall be removed to sound concrete and prepared according to the specifications of the

concrete repair material manufacturer. These areas to be repaired shall be prepared by media less needle gun, bush hammer, or FW written approved equivalent, to roughen the surface and clean to remove dust, laitance, grease, or other bond inhibiting materials and blown off with high pressure air. If compressed air is used, care must be taken to avoid oil contamination in the structure. A concrete-based patching material, such as Sika Corporation's Sika Top 111 Plus, shall be placed in the deteriorated area and finished to the original contour of the concrete. The quantity of total square feet of partial depth concrete repair (based on an average depth of 1 inch) shall be paid for by the unit price per square feet in accordance with Item 3 of Attachment I (Revised Bid Submission Form).

- C. Concrete Crack Repair: Any leaking concrete cracks, or voids indicated by FW shall be prepared according to the specifications of the concrete crack repair material manufacturer. The cracks in the concrete shall then be filled by injection with an appropriate, high-quality polyurethane injection resin/grout, such as Avanti International's AV-248 Flexseal, or AV-315 Microfoam. The number of linear feet of concrete crack repair shall be paid for by the unit price per linear feet in accordance with Item 4 of Attachment I (Revised Bid Submission Form).

1.2 Protection and Restoration

Work areas could potentially function as holding areas for drinking water. Therefore, any items entering the work area which will contact the floor or walls (such as boots and supplies/equipment) shall be clean prior to entry. Fairfax Water will provide cleaning solution and procedures for use by the Contractor prior to entry. When work is completed, the Contractor is responsible for cleaning the work area to a condition equivalent to when work began. Any items damaged by the operations of the Contractor shall be replaced in kind or acceptably repaired by the Contractor at no cost to FW. The Contractor shall restore disturbed surfaces and structures to a condition equal to, or better than, before the work began, to the satisfaction of FW, and shall furnish all labor and materials incidental thereto.

1.3 Contractor Safety Requirements and Safety Program

- A. The Contractor shall be solely and completely responsible for conditions of the jobsite, including the safety of all persons (including employees) and property during performance of the work. This requirement shall apply continuously, whenever work is performed. Safety provisions shall conform to U.S. Department of Labor – Occupational Safety and Health Administration (OSHA), and all other applicable federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall take precedence. The Contractor's failure to thoroughly familiarize himself with the aforementioned safety provisions shall not relieve him from compliance with the obligations and penalties set forth therein.
- B. Lock-out/Tag-out: Contractor shall provide their own locks to perform the lock-out/tag-out requirements. At the beginning of the work, the Contractor shall review each lock-out point with FW staff and apply their own lock over the previously FW locked-out point.

- C. The Contractor shall comply with all applicable Federal, State, and local safety programs, regulations, standards, and codes, to include, but not limited to:
 - 1. The Virginia Uniform Statewide Building Code,
 - 2. Building Officials & Code Administrators (BOCA) codes (together with adopted International Codes),
 - 3. Virginia Department of Health (VDH) regulations,
 - 4. Virginia Department of Environmental Quality (DEQ) regulations,
 - 5. Virginia-OSH (VOSH) regulations, and National Electric Code (NEC).
- D. The Contractor shall have a written safety program that complies with all applicable OSHA and VOSH standards for General Industry regulations and a written Permit Required Confined Space Entry Program that complies with the then current VOSH Standard Confined Space Entry Standard. A copy of these programs shall be provided to FW with the Contractor's general safety program not later than seven days after contract award and before beginning work.
- E. When working in a confined space, the Contractor shall utilize only personnel trained for confined space entry and shall provide all entry equipment including atmospheric test equipment.
- F. Hard Hat Area: Contractor's employees shall wear hard hats while working outdoors at the work site.

1.4 Site Safety and Access

- A. The Contractor shall schedule and coordinate the work and install temporary facilities as required to maintain continuous operation and access to existing equipment in the area of work. The Contractor shall not commence retrofit work until authorized by the FW Project Manager. The Contractor is advised that FW may, at its sole discretion, delay or stop work as required to ensure continuous and reliable operation of the facility, especially during peak flow events.
- B. The Contractor shall secure the Site and all areas of Work to prevent access and the potential for injury to its employees, FW employees, its agents, and others by construction and installation of temporary guard-rails, fencing, barricades, highway cones, warning signs/tape, etc., and other appropriate means, and as directed by the FW Project Manager. Such hazards include but are not limited to mechanical hazards, electrical hazards, surface irregularities or construction tools and equipment.
- C. FW shall have the right to deny access to the Site, or require the Contractor to remove from the Site, any individual who has exhibited violent, abusive, or threatening behavior or conduct.
- D. FW may limit, restrict, or prohibit access to areas of the Site on a permanent or temporary basis. When access to such restricted areas is required by the Contractor to perform the work, the Contractor shall obtain permission from the FW Project Manager and shall comply with such conditions or limitations to access as may be imposed by the FW Project Manager.

- E. FW may restrict parking or require parking permits for vehicles to be brought onto the plant. The Contractor shall be responsible for arranging transportation for its personnel to reach the job sites from whatever parking area is provided by FW.

1.5 Inspection of Job Site

Changes to Existing Conditions: Contractor shall promptly notify the Project Manager or his designee of any site changes that may affect the Project as soon as such changes are discovered. Work in the affected area shall be halted until the Project Manager or his designee inspects the newly discovered condition. To the extent that such changes affect the scope of the contract, the Contractor shall submit a written proposal for any work necessary to complete the Project. Such proposals shall be submitted within 48 hours of discovery and shall include a detailed listing of all additional price changes to FW.

1.6 Permits and Inspections

- A. The Contractor shall obtain and provide any and all required confined space, electrical, mechanical, fire and/or other permits from the appropriate county authority.
- B. The Contractor shall be responsible for scheduling all inspections and performing all work necessary for testing and inspections as required by any and all authorities having jurisdiction during the course of Work.

1.7 Cleaning Surfaces

The surfaces to be repaired shall be kept clean and any standing water must be removed by the Contractor to prepare the surfaces for the repairs in accordance with the manufacturer's instructions. The Contractor shall remove all standing water, mud, and debris prior to starting work. All costs for preparing and maintaining the cleanliness of the surfaces for repair shall be included in the Base Price. Any water that enters the work area through leaking gates or valves throughout the course of the Project will be diverted from the work area by Fairfax Water staff.

1.8 Certification

All tools, and materials shall comply with the ANSI/NSF Standard 61 "Drinking Water System Components - Health Effects".

1.9 Submittals

Contractor shall provide a list of materials, shop drawings and/or engineering data for approval by FW on all products proposed for installation. FW will review and respond to Contractor, in writing, within 24 hours if product is approved.

1.10 Schedule

Contractor will be provided a written Notice to Proceed by FW. Contractor shall have a pre-determined amount of time, depending on the scope, to complete work after

Contractor has been Notified to Proceed by FW. A preapproved work schedule shall be submitted for each day of work required, defining daily start and end time for each day.

2.0 COMPENSATION

***The quantities specified below have been estimated, exact quantities shall be subject to the individual job requirements of Fairfax Water.**

Item No.	Item Description	Estimated Annual Quantity	Unit	Unit Price	Total Amount
1	Base Proposal (Mobilization & Setup)	1	Lump Sum	N/A	\$10,500.00
2	Sikadur-Combiflex SG System Removal, and Installation	150	Linear Feet	\$91.00	\$ 13,650.00
3	Partial Depth Concrete Spall Repair	100	Square Feet	\$149.00	\$ 14,900.00
4	Interior Concrete Crack Repair Grout Injection	50	Linear Feet	\$ 99.00	\$ 4,950.00

TOTAL AMOUNT PROPOSED
(Items 1 through 4 inclusive)

\$ 44,000.00

3.0 STANDARD TERMS AND CONDITIONS

This Agreement is subject to the following Terms and Conditions:

3.1 Term

The Agreement term shall cover the period from March 11, 2019 through March 10, 2020. This Agreement may be renewed at the expiration of the initial term at the request of FW. The renewal may be for up to five (5) additional one (1) year periods. Unless otherwise agreed to by the parties or as may be required by law, any renewal shall be based on the same price structure, terms and conditions.

3.2 Authorization to do Business in Virginia

Each Contractor that is organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Virginia Code shall include with its bid the identification number issued to it by the Virginia State Corporation Commission. Any Contractor that is not authorized to transact business in Virginia as a foreign entity under Title 13.1 or title 50 of the Virginia Code or as otherwise required by law shall include in its bid a statement describing why the Contractor is not required to be so authorized.

3.3 Additional Quantities

FW reserves the right to purchase additional quantities of the goods or services specified herein at the bid price for up to one year from the date of contract award.

3.4 Annual Economic Price Adjustment

- A. The Contractor may submit a request for contract price increases once annually for each renewal year. Economic increases shall be limited to the increase specified in the Bureau of Labor Statistics for each November of the then current contract year.
- B. For services: Annual rate increases will be based on the Consumer Price Index-U (CPI-U), Washington-Arlington-Alexandria.
- C. For commodities: If the CPI-U is not the appropriate index for the item(s) being bid, the Contractor may substitute any other single BLS price index (e.g. Producer Price Index – metals) providing that the substitute price index constitutes the greatest component of the contract item. Multiple price indexes will not be considered for the same bid item. Contractor may specify a different index for different bid items based on the conditions identified above. Contractor must specify the specific BLS Group and BLS Item that is to be used (e.g. BLS Group: Metals and products; BLS Item: Pressure pipe and fittings, ductile iron (BLS Series ID# WPU10150237).
- D. Negative BLS index: If the agreed upon index is a negative number the Contractor shall reduce contract rates by the same amount for new contract year.

3.5 Anti-Discrimination

The Contractor certifies to FW that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act.

- A. During the performance of the contract, the Contractor agrees as follows:
 - 1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2. The Contractor, in all Agreements or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - 3. Notices, advertisements and Agreements placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

- C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

3.6 Antitrust

By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FW all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FW.

3.7 Arrearage

The Contractor shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits. Contractor further agrees that it shall make diligent efforts to avoid becoming in arrears during the Term of any Contract awarded hereunder.

3.8 Assignment of Interest

The Contractor shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.

3.9 Availability of Funds

It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Agreement.

3.10 Compliance with Laws, Regulations and Codes

The Contractor hereby represents and warrants that:

- A. It is qualified and properly licensed to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

3.11 Contract Changes / Change Orders

- A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from this Agreement or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in the Agreement, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the purchasing contact identified on the cover page of Attachment II. Contract changes shall be in writing and shall be on official FW Purchasing Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Project Manager.
- B. Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
 2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor's records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

3.12 Contractor's Responsibilities

- A. The Contractor shall be responsible for all products and/or services as required by this agreement. The use of subcontractors is prohibited unless:
1. A request to include a subcontractor was included in the bid and,
 2. The Contractor receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties.

- B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the contract.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subcontractor's failure to protect such facilities and utilities.
- D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its Subcontractor(s). Replacements will be of equal or better quality than the property damaged property, and all such work must be approved by FW Project Manager.

3.13 Debarment Status

The Contractor certifies that it is not currently debarred by the federal government, the Commonwealth of Virginia, or any agency or department thereof from submitting a bid or proposal in connection with any procurement project and that it is not an agent of any person or entity that currently is so debarred.

3.14 Delivery

In the case of Agreements that require delivery to FW:

- A. The Contractor guarantees delivery of contract items within the timeframe specified herein or as indicated in, Attachment I, the Contractors bid submission form. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of contract and may be grounds for a declaration of default in addition to any other remedies FW may be entitled to.
- B. Deliveries must be made by within the delivery time specified in Attachment I, the bid submission form. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.

3.15 Ethics in Public Contracting

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from this Agreement, are proper and in accordance therewith.

3.16 Examination of Records

Contractor agrees that either FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this agreement. This

obligation shall expire five years after the final payment for the final service performed pursuant to this Agreement, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

3.17 Formation of Contract

- A. The words "Agreement", "Contract" and "Purchase Order" are used interchangeably unless the context otherwise plainly requires. The documents comprising the Contract shall be accorded the following order of precedence:
 - 1. All Attachments (including the Contractor's completed bid response)
 - 2. All Purchase Orders
 - 3. Any Change Orders
- B. Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

3.18 Governing Law; Venue; Waiver of Jury Trial

Notwithstanding any provision to the contrary, this Agreement and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

3.19 Incorporation by Reference

This Agreement is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the Agreement. By submitting a bid in response to this Agreement, all Contractors acknowledge the VPPA and agree to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website:

<https://law.lis.virginia.gov/vacodepopularnames/virginia-public-procurement-act/>

3.20 Indemnification and Responsibility for Claims and Liability

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.
- B. FW has no obligation to provide legal counsel or defense or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is

brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.

- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- D. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any loss, including Attorneys' fees arising out of any such claim.

3.21 Insurance

- A. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.
- B. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.
- C. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract
- D. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:
 - 1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
 - 2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

◆ General Aggregate Limit (Other than Products-Completed Operations)	\$1,000,000
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◆ Products-Completed Operations Aggregate Limit	\$ 500,000
◆ Personal & Advertising Injury Limit	\$ 500,000
◆ Each Occurrence Limit	\$ 500,000
For Construction Contracts:	
◆ Directors & Officers – Errors & Omissions	\$2,000,000

- E. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least \$500,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.
- F. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

3.22 No Waiver or Estoppel

Neither the inspection by FW nor any of its employees, nor any payment of money, nor payment for, nor acceptance of any Commodity by FW, nor any extension of time shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or of any right to damage herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies provided in this Contract to FW shall be construed as cumulative and shall be in addition to each and every other remedy herein provided. Neither FW, nor any officer, employee, or authorized representative of FW, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, employee or authorized representative of the Owner, at any time either before or after final completion and acceptance of the Work and payment therefore from: (a) showing the true and correct classification, amount, quality, or character of the Commodities delivered, or that any determination, decision, acceptance, return certificate or payment was incorrect or was improperly made in any respect, or that the Commodities or any part thereof do not in fact conform to the requirements of the Contract; (b) demanding and recovering from the Contractor any overpayment made to the Contractor or such damages as FW may sustain by reason of the Contractor's failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

3.23 Pass-through Price Increases and Decreases

For annually renewable contracts:

- A. Increases: FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.

- B. Decreases:
 - 1. Pass through price increases shall cease at the end of the then current contract year and contract pricing will return to the pre-pass-through rate. The contractor will be eligible for and only upon request, the annual economic price increase as defined in subsection 3.3 above.
 - 2. Prior to the end of the then current contract year, the pass-through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.
- C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

3.24 Payment Clauses Required in All Contracts

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

- A. That any contract awarded by FW include the following clauses:
 - 1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
 - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
 - b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
 - 2. Contractors shall include in their offer of submissions either: (i) if an individual contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
 - 3. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
 - 4. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
- B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

3.25 Payment

- A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
- B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect bids of discounts for payment in less than 30 days, however.
- C. Invoices: The Contractor shall submit invoices for items ordered, delivered and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or contract number and are subject to review and approval by FW Project Manager
- D. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Contractor must waive the requirement in order to remain in consideration.
- E. Refunds: If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Contractor must waive the requirement in order to remain in consideration.
- F. Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

3.26 Precedence of Terms

These General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this Agreement, the Special Terms and Conditions shall apply.

3.27 Price and Title

All prices are for Commodities delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW. Title for such Commodities shall pass to FW upon receipt and acceptance thereof at FW's designated facility.

3.28 Purchase and Sale Transaction

Any transaction for the purchase and sale of any Commodity shall be effected by FW's issuance to the Contractor of a Purchase Order, in which event the Contractor covenants and agrees to furnish all Commodities described therein in strict accordance with the terms and conditions of such Purchase Order and the other documents that together constitute the Contract.

3.29 Taxes

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW's tax identification number is 54-6025290.

3.30 Termination of Contract

- A. For Cause. In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.

If, after issuance of a notice of termination under this Section it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties shall be the same as if the notice of termination had been delivered under the provisions of subsection B (termination for convenience) hereof; provided, however, that the Contractor in such event shall be deemed to have received seven days prior written notice of such termination. Any compensation due the Contractor pursuant to subsection B shall be offset by the cost to FW of remedying the default by the Contractor. The Contractor shall in no event be entitled to receive any consequential damages or any anticipated profits with respect to Commodities not yet furnished to, and accepted by, FW as of the effective date of any such termination.

- B. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

3.31 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

3.32 Warranty

- A. The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.
- B. Materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of 12 months following date of final acceptance. Should any defect be noted by the FW, the Project Manager will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) FW does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to FW and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.
- C. Work not conforming to these warranties shall be considered defective.
- D. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this contract.

NOTE: Any implied warranties, including but not limited to the warranty for "Merchantability and Fitness for A Particular Purpose" cannot be waived and are a mandatory part of this Agreement.

3.33 Faith-Based Organizations

FW does not discriminate against faith-based organizations.

3.34 Immigration Reform and Control Act of 1986

By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

4.0 SPECIAL TERMS AND CONDITIONS

4.1 Delays

- A. By the Contractor: After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by any means available to FW, including (but not limited to) liquidated damages, redeeming the Contractor's Performance Bond (or other security as agreed to by FW prior to contract award); and to recover any additional costs, lost funds and/or related expenses. This is not a limitation of FW's legal rights to recover damages due to Contractor default in any other way.
- B. By FW: The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the actions or inactions of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension to the installation schedule equal to the documented amount of time the Contractor was prevented from performing work. The Contractor shall not be eligible for damages as a result of FW delays.

4.2 Force Majeure

If work is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subcontractors or supplier(s), a reasonable extension of time as FW or the Member deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, FW or the Member may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one or more of the Commodities elsewhere for a time, or (iii) terminate the Contract; all without liability to Contractor on the part of FW or Member, as the case may be. Contractor's request and justification shall be subject to such substantiation and further inquiries as FW or Member may require.

4.3 Superintendence by Contractor

- A. The Contractor shall assign a competent project Superintendent/Foreman for approval by FW. The Superintendent/Foreman shall submit a resume prior to job commencement to ensure qualifications satisfy FW requirements. Once approved, the Superintendent shall remain at the job site at all times throughout the duration of the project. The Contractor shall be responsible for coordinating all portions of the work under contract except where otherwise specified in the contract documents, and for all safety and worker health programs and practices. The Contractor shall notify the Project Manager, in writing, of any proposed change in Superintendent, including the reason, prior to making such change.
- B. The Contractor shall provide a list containing full names of all crew members intended to work throughout the duration of the project. The Contractor, and Superintendent shall always enforce strict discipline and good order among the workers on the project. The Contractor shall not employ any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, Subcontractors, FW or FW's separate Contractors and their Subcontractors.

- C. FW may, in writing, require the Contractor to remove from FW property, any employee FW deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

4.4 Priority Customer

Contractor understands and acknowledges that FW provides services that are essential to the health and welfare of the public. To the extent that the Contractor must prioritize and/or allocate services among its customers, the requirements of FW will be honored before service is provided to a customer with no obligations regarding public health and welfare.

4.5 Time is of the Essence

Time is of the essence, this is a time critical project! Unauthorized delays by the Contractor are prohibited; once started, the work must continue without delay or interruption. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by obtaining the services of a qualified replacement to complete the work and any additional or increased costs incurred as a result, shall be charged to the Contractor.

FAIRFAX COUNTY WATER AUTHORITY

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By: 

Name: Donald R. Legg, CPPO

Title: Procurement Manager

Date: 3/14/19

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By: 

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Title: CPD

Date: 3/29/19