

**Contract No. 2025-061**  
**JOB ORDER CONTRACTING (JOC) CONSTRUCTION SERVICES**  
**AGREEMENT**

THIS AGREEMENT for a Job Order Contract (JOC or Contract) for Construction Services, effective this 18 day of June, 2025, is by and between **FAIRFAX WATER** (herein referred to as the "FW" or the "Owner"), and **F.H. PASCHEN, S.N. NIELSEN & ASSOCIATES LLC** (herein referred to as the "Contractor").

In consideration of the promises made herein and other good and valuable considerations, the following terms and conditions are hereby agreed to between FW and Contractor.

**Article 1**  
**CONTRACT DOCUMENTS**

- 1.1 This Agreement and the Contract Documents as specified below, in their entirety, comprise the contract, and all are as fully a part hereof as if attached to this Agreement or repeated herein.
- 1.2 The Contract Documents consist of:
- A. This Agreement
  - B. FW's Invitation for Bid (IFB) No. 25-019 (which includes the Contract Terms and Conditions), including any Addenda
  - C. RS Means Facilities and Construction Cost Data (UPB)
  - D. The Contractor's bid submission (all parts)
  - E. Notice of Award
  - F. Performance and Labor and Material Payment Bonds and Insurance Certificates provided
  - G. Job Orders, Requests for Price Proposals, and Detailed Scopes of Work (including and referenced supplemental Specifications and/or drawings) issued under the Contract
  - H. The Contractor's Price Proposals submitted under the Contract
  - I. Written Modifications to the Agreement, signed by both parties, issued after the Agreement has been executed

The order of precedence should a discrepancy amongst the Contract Documents arise is as provided herein at Section 1.2 and as further provided in the IFB at Section 3.A.1 Section 00700.

**Article 2**  
**STATEMENT OF WORK**

- 2.1 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work for each Project, as required by the Contract Documents.

**Article 3**  
**CONTRACTOR**

- 3.1 The Contractor is an independent Contractor and nothing in this Agreement shall be construed as implying the relationship of principal and agent or employer and employee between FW and Contractor, the Contractor's employees or designees. The independent Contractor shall exercise daily control over its employees' activities.

**Article 4**  
**TIME OF COMMENCEMENT AND COMPLETION**

- 4.1 The Base Term of the Contract is one (1) year from the date of the execution of this Agreement. The Contract may be renewed based upon on the same terms and conditions, other than Bid Adjustment Factors, at the expiration of the Base Term upon mutual agreement of the parties. The renewal may be for up to three (3) additional one-year periods (Option Terms). The total duration of this Contract, inclusive of all Option Terms shall not exceed four (4) years.
- 4.2 The Contractor shall commence the Work promptly upon the date established in each Job Order under the Contract; and, the Work shall progress with diligence and in the order which may be reasonably required.
- 4.3 Time is of the essence. The Contractor agrees to achieve Final Completion of the Work within the time specified in each Job Order (therein designated as the Job Order Completion Time).
- 4.4 The amount of Liquidated Damages, if any, shall be assessed on a Job Order by Job Order basis pursuant to Contract Terms and Conditions contained in the IFB. This provision for Liquidated Damages does not bar FW's right to enforce other rights and remedies against Contractor, which are otherwise legally enforceable, including but not limited to, specific performance or injunctive relief.

**Article 5**  
**CONTRACT SUM**

- 5.1 Contractor acknowledges the Contract is an indefinite-quantity contract for the improvement, alteration, repair and construction of mechanical infrastructure, or other real property.

- 5.2 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by modification or as otherwise provided in the Contract Documents, FW agrees to pay, and the Contractor agrees to accept as full payment, the Job Order Amount stated on each Job Order issued under the Contract in consideration of the due fulfillment of the conditions of the Contract.

**Article 6**  
**PROGRESS PAYMENTS**

- 6.1 The Contractor hereby agrees that on or about the last day of every month during the performance of the Work the Contractor will deliver to FW an application for Payment for the Work for the preceding thirty (30) days in accordance with the provisions of the Contract Terms and Conditions. Each Job Order will be invoiced separately by the Contractor. This date may be changed upon mutual agreement, stated in writing, between FW and Contractor. Payment under this Contract shall be made as provided in the Contract Terms and Conditions.

**Article 7**  
**IMMIGRATION REFORM AND CONTROL ACT OF 1986**

- 7.1 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.

**Article 8**  
**NON DISCRIMINATION**

- 8.1. During the performance of this Contract, the Contractor agrees as follows:
- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
  - C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.
- 8.2. The Contractor will include the provisions of the foregoing paragraphs, 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**Article 9**  
**DRUG-FREE WORKPLACE**

- 9.1 During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

**Article 10**  
**OTHER REQUIREMENTS**

- 10.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond, Bid Bond and Certification of Insurance as required by the Contract Documents.
- 10.2 To the extent required by the Commonwealth of Virginia (see e.g. 54.1-1100 et seq. of the Code of Virginia) or FW, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.
- 10.3 A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with FW pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. FW may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

**Article 11**

**ENTIRE AGREEMENT AND SEVERABILITY**

- 11.1 This Agreement represents the entire and integrated contract between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Agreement may be amended or changed only by a Modification. Nothing contained in the Contract Documents shall create any contractual relationship between FW, or any agent, consultant, or independent contractor employed by FW and any subcontractor, sub-subcontractor, supplier or vendor of the Contractor, but FW shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.
- 11.2 In the event that any provision of this Agreement shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding, and in full force and effect.

**Article 12**

**GOVERNING LAW/FORUM**

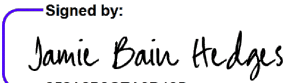
- 12.1 This Agreement shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia, without giving effect to its conflicts of laws provisions. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent 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.

**Signatures on the following page**

Witness the following signatures:


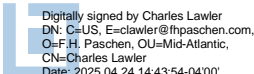
**FAIRFAX WATER**

8570 Executive Park Avenue  
Fairfax, Virginia 22030

By   
SIGNED BY: Jamie Bain Hedges  
252A8B3CEA0D465...  
Name Jamie Bain Hedges, P.E.  
Title General Manager  
Date 6/18/2025

**F.H. PASCHEN, S.N. NIELSEN &  
ASSOCIATES LLC**

5515 N. East River Road  
Chicago, Illinois 60656

By   
Name Charles Lawler   
Title Agent & Vice  
Date 04/25/2025  
**CLawler**  
4/24/2025, 2:42:50 PM  
**CLawler**  
4/24/2025, 2:43:10 PM  
**CLawler**  
4/24/2025, 2:43:21 PM  
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04/25/2025

Contract No. 2025-061  
Compensation Schedule

Contract Item	Adjustment Factor
Normal Working Hours with Project Management	0.8500
Other Than Normal Working Hours with Project Management	0.8700
Non Pre-Priced Items	1.2000

End of Compensation Schedule

**IFB 25-019****2 SPECIFICATIONS & SCOPE OF WORK****2.1 Overview**

- A. The Unit Price Book (UPB) for the resulting contract shall mean the current editions of the RS Means Facilities Construction Cost Data book. The Fairfax, Virginia Weighted Average City Cost Index and the prices in the “Total, incl. O & P” column will be used. The total value of the applicable line items and their quantities will be multiplied by the City Cost Index and the Contractor’s designated coefficient to determine the lump sum cost of job orders.
- B. Upon completion of the joint scoping process, Contractor shall prepare a Detailed Scope of Work (DSOW) and issue a RFPP further defining and restating the scope including any sketches, drawings, photographs and specifications and providing a line item proposal of the individual tasks, quantities, and costs. The proposal shall also include proposed subcontractors and specific equipment and product information for FW approval.
- C. A separate Job Order will be issued for each Project prior to the commencement of any Work by the Contractor, except in a declared State of Emergency as provided in Section 6.3.D.(5). A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Amount. The Job Order Amount is determined by multiplying the pre-established Unit Prices for the appropriate tasks required to complete the Detailed Scope of Work by the appropriate quantities and the applicable Adjustment Factor. The Job Order Amount shall be a lump sum, fixed price for completing the Detailed Scope of Work. Unforeseen/latent conditions, additions to and deletions from the Detailed Scope of Work will be addressed via Change Orders.
- D. The Work will be set forth in the Detailed Scope of Work for individual Job Orders. The Contractor is required to complete each Detailed Scope of Work for the Job Order Amount within the Job Order Completion Time.
- E. The Contractor will be required to perform Work at FW owned or controlled facility. It is anticipated that the Work will be distributed randomly throughout the geographic area comprising FW service area and the Contractor may be required to perform Work at multiple sites simultaneously.
- F. The Contractor shall have a point of contact (i.e., email, voice mail or answering machine) where messages can be left. There should be a response no later than twenty-four (24) hours from when the message was left. Repeated failure to respond within the allotted timeframe shall, at the option of FW, result in non-renewal or termination of the Contract.
- G. FW has the option of declaring any needed work to be an emergency. In the event of a natural or manmade disaster or any other catastrophes, the Contractor, when so directed, shall respond within two (2) hours of notification.
- H. All Work performed by the Contractor under the Contract shall meet all applicable state and local building codes, ordinances and regulations and the Contractor shall be required to obtain all required permits and inspections. All subcontractors shall have a Virginia Class A

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contractor's license. Construction documents requiring the signature of a registered architect or Engineer.

### 2.2 Estimated Quantities of Optional Use Contract

The quantities specified herein are estimates based upon current consumption and projected demand for the next contract year, and shall not be construed to represent an amount which FW shall be obligated to purchase. The exact amounts ordered may be more or less, subject to FW's actual needs.

Any contract resulting from this solicitation shall be an optional use contract. FW is in no way required to make purchases from the Contractor, and may, in its sole discretion, purchase identical and/or similar goods/services from other sources. Any estimates/quantities contained herein do not represent a purchase commitment by FW.

### 2.3 Project Management

A majority of FW projects will require project management. Project Management personnel must have a minimum of three (3) years experience performing JOC contracting. Project Management staff will be required to coordinate projects with FW staff, Building Occupants and Subcontractors to provide updates on the project.

### 2.4 JOC Project Support Requirements

- A. The contractor shall provide computer software that provides the user with an automated version of the Unit Price Book items and price information, allow the user to select the desired Unit Price Book items and quantities from the automated listings, and based on these selections will extend and total the Unit Price Book costs for the project job order proposal. At least one (1) network copy of this software allowing unlimited users shall be provided to FW after Contract Award. Training for use of the software shall also be provided for ten (10) FW employees at no additional cost to FW.
- B. The supplier of the JOC software may from time to time issue updates to, or replacements for the software for the term of the contractor. All changes and updates to the software shall be made by the contractor and a new copy of the software shall be furnished to FW within two weeks. The Contractor shall promptly install the new software, at no additional cost to FW, and shall provide FW with computer printouts that adequately verify the incorporation of these changes.
- C. The Contractor shall not alter, append, delete or otherwise modify the programming, Unit Price Book items, or prices contained in JOC software, unless otherwise directed by FW.
- D. Each project proposal submitted by the Contractor shall contain a computer-generated printout of all proposed Unit Price Book items, quantities, extended prices, and total proposed cost.
- E. All unit prices are based on local labor, material and equipment prices for the direct cost of construction.

### 2.5 Master Text Specifications

The Master Text Specifications and all current national and local codes will apply to the work done under this contract. All work under this contract shall conform to the Virginia Uniform Statewide Building Code, the Public Facilities Manual and applicable FW regulations.

**IFB 25-019****2.6 Performance of the Work**

Contractor may self-perform construction work. All subcontractors shall have a Class A contractor's license. Construction documents requiring the signature of a registered architect or Engineer shall be prepared by firms engaged by the FW and will be provided to the Contractor.

**2.7 Ordering Procedure**

A. Initiation of a Job Order - As a need arises or exists for performance by the Contractor; FW will notify the Contractor of a Project by issuing a notice of a Joint Scope Meeting. The Contractor shall be required to be available to attend a Joint Scope Meeting within forty-eight (48) hours from receipt of a notice of a Joint Scope Meeting (required response time shortened to two (2) hours in the event of an emergency).

The Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:

1. The general Scope of Work,
2. Methods and alternatives for accomplishing the Work and value engineering,
3. Access to the Site and protocol for admission/access,
4. Hours of construction operation,
5. Staging area,
6. Specific quality requirements for equipment and material,
7. Requirements for catalog cuts, technical data, samples, shop drawings and Incidental Design,
8. The presence of hazardous materials,
9. Temporary services and shutoffs,
10. Safety issues/concerns/procedures,
11. Permit requirements, if any,
12. Liquidated Damages,
13. Construction Duration, and
14. Date on which Price Proposal is due.

B. Detailed Scope of Work (DSOW) & Development and Issuance of a Request for Price Proposals (RFPP) – Upon completion of the joint scoping process, Contractor shall prepare a DSOW and issue a RFPP further defining and restating the scope including any sketches, drawings, photographs and specifications and providing a line-item proposal of the individual tasks, quantities, and costs. The proposal shall also include proposed subcontractors and specific equipment and product information for FW approval.

The RFPP will include at a minimum, the following information:

1. Master Agreement Number
2. Job Order Number
3. Project Location
4. Brief Project Description
5. Detailed Scope of Work
6. Technical Drawings
7. Price Proposal Due Date

C. Preparation of the Price Proposal – Contractor shall prepare its Price Proposals in accordance with the following:

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1. Pre-priced Tasks: For Pre-priced Tasks the Contractor shall identify the task and quantities required from the UPB necessary to complete the DSOW.
2. Non Pre-priced Tasks: Non-Pre-priced Tasks shall be separately identified and submitted in the Price Proposal. Information in support of the Non Pre-priced Task shall include, but is not limited, to the following:
  - i. Catalog cuts, specifications, technical data, drawings, or other information as required evaluating the task.
  - ii. If the Contractor performs the Work with its own forces, it shall submit three (3) independent quotes for all material to be installed and shall, to the extent possible, use pre-priced labor and equipment from the UPB. If the Work is to be subcontracted, the Contractor shall submit three (3) independent bids from Subcontractors. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. FW may require additional quotes and bids if the suppliers and Subcontractors are not acceptable or if the prices are deemed (in the sole judgment of FW) not to be reasonable. FW may request a particular supplier and/or subcontractor if such supplier and/or subcontractor (in the sole judgment of FW) and quotes or bids are deemed to be acceptable.
  - iii. The final price for non-pre-priced Tasks shall be according to the following formula:

For Work Performed with the Contractor's Own Forces:

A = The number of hours for each labor classification and hourly rates (for Trades not in the UPB)

B = Equipment costs (other than small tools)

C = Three independent quotes for all materials

Total Cost for self-perform work =

$(A+B+C) \times \text{NPP Adjustment Factor}$

For Work Performed by Subcontractors: If the Work is to be subcontracted, the Contractor must submit three (3) independent bids from Subcontractors. If three (3) quotes or bids cannot be obtained, the Contractor will provide in writing to FW, for FW approval, the reason why three (3) quotes cannot be submitted. If FW requests a particular Subcontractor, FW will provide Contractor in writing a waiver of the requirement for submittal of independent bids.

D = Subcontractor Costs (supported by three quotes or FW submitted quote)

Total Cost of Non Pre-priced Task =  $D \times \text{NPP Adjustment Factor}$

- iv. FW's determination as to whether a task is a Pre-priced Task or a non-Pre-priced Task shall be final, binding and conclusive.
- D. Contractor's Price Proposal Package: The Contractor's Price Proposal Package shall include, at a minimum:

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1. Price Proposal (Detail and Summary)
  2. Non Pre-priced Task Support (if applicable)
  3. Catalog Cuts, Technical Data or Samples
  4. List Of Anticipated Subcontractors, Anticipated Subcontract Values
  5. Proposed Progress Schedule
  6. Certificates For Any Special Insurance Required
  7. Sample Warranties Or Guarantees For Materials, Equipment Or Systems
  8. Proposed
- E. The Contractor's Price Proposal Package shall be submitted by the date indicated on the RFPP. All incomplete Price Proposal Packages shall be rejected. The time allowed for preparation of the Contractor's Price Proposal Package will depend on the complexity and urgency of the Job Order but should average between seven (7) and fourteen (14) days. On complex Job Orders, such as Job Orders requiring extensive approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the Price Proposal Package and will be so reflected in the Price Proposal Package due date entered on the RFPP.
- F. The Contractor shall provide all Incidental Design services required in connection with a particular Job Order including drawings and information required for filing.
- G. Contractor shall make all necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings and sketches, calculations and other documents and information that may be required thereof. If the Contractor is required to pay an application fee for filing a Project, a fee to obtain a building permit, or any other permit fee to any City, State or some other government or regulatory agency, then the amount of such fee paid by the Contractor for which a receipt is obtained shall be treated as a reimbursable cost for which FW will reimburse the Contractor dollar for dollar (1:1, no markup). The Contractor may include the fees incurred in its Price Proposal utilizing line item from the UPB for Reimbursable Fees and apply an Adjustment Factor of 1.0000. The costs of all activities required to obtain the permits (including expediting services) will be at the Contractor's expense.
- H. In emergency situations that may include or entirely consist of minor maintenance and repair Job Orders requiring immediate completion, the Job Order Price Proposal Package may be required quickly and the due date will be so indicated on the RFPP or, the Contractor may be directed to begin the Work immediately with the paperwork to follow.

**2.8 Review of the Price Proposal Package and Issuance of a Job Order**

- A. FW will evaluate (a) the entire Price Proposal and proposed tasks therein and compare these with the DSOW and any estimate FW may have prepared to determine the reasonableness of approach, including the nature and quantity of tasks proposed and the means and methods utilized, and; (b) all other components of the Price Proposal Package.
- B. FW reserves the right to reject the Contractor's selection of Subcontractors on individual Job Orders. Failure to include the Subcontractor list in the Price Proposal Package submitted on each Job Order shall be cause for rejection of the Price Proposal as non-responsive.

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- C. FW reserves the right to reject a Price Proposal, or any other component of the Price Proposal Package, for any reason. FW also reserves the right not to issue a Job Order if it is determined, in the sole judgment of FW, not to be in FW’s best interest. The Contractor shall have no claim to recover any costs arising out of or related to the development of the Price Proposal Package including but not limited to the costs to attend the Joint Scope Meeting, review of the DSOW, all costs associated with preparing a Price Proposal (and any other component of the Price Proposal Package), any Subcontractor costs incurred, and the costs to review the Price Proposal with FW. FW may pursue the performance of such Work by other means.
  
- D. By submitting a signed Price Proposal to FW, the Contractor agrees to accomplish the Work set forth in the Detailed Scope of Work in accordance with the Request for Price Proposal at the price submitted. It is the Contractor's responsibility to include the necessary tasks and quantities in the Price Proposal prior to delivering it to FW.
  
- E. Each Job Order provided to the Contractor shall reference the Detailed Scope of Work and set forth the price to be paid (Job Order Amount) and the Job Order Completion Time. All clauses of the JOC shall be applicable to each Job Order. Each Job Order shall be accepted by the Contractor and approved by FW. A signed copy of the Job Order will be provided to the Contractor. Each Job Order shall include, as a minimum, the following information:
  - 1. Master Agreement Number
  - 2. Job Order Number
  - 3. Project Location
  - 4. Brief Project Description
  - 5. Referenced Detailed Scope of Work and RFPP
  - 6. Supplemental Technical Specifications (if applicable)
  - 7. Job Order Completion Time
  - 8. Acceptance Signature Block for the Contractor
  - 9. Approval Block for FW’s Authorized Representative
  - 10. Notice to Proceed (NTP) Date
  
- F. In the event that an emergency response is necessary, the Contractor shall be required to follow alternative procedures as established by FW. The Contractor shall begin Work as directed, notwithstanding the absence of a fully developed Request for Price Proposal, DSOW, or Job Order. The Contractor shall be compensated in accordance with the Unit Price Book and NonPre-priced Tasks as if the Work had been ordered under the standard ordering procedure.
  
- G. Each Job Order issued is subject to the Agreement’s terms and conditions.
  
- H. Any Job Order may require the performance of Work at multiple Sites.
  
- I. Unless otherwise authorized in writing by FW, the Contractor shall make no change which will increase either the Job Order Completion Time or the Job Order Amount.

**2.9 Existing Conditions**

By executing a Job Order, the Contractor represents that it has visited the Project Site(s) and familiarized itself with the local conditions under which the Work is to be performed. FW does not undertake to represent or warrant Site or local conditions.

**IFB 25-019****2.10 Measurements and Dimensions**

By Ordering Material or doing Work which is dependent upon coordination with existing building conditions, the Contractor shall verify all dimensions, elevations, grades and pitch by taking measurements at the building or Site and shall be responsible for the correctness of the same.

**2.11 Commencement and Prosecution of the Work**

- A. Timing: The Contractor must commence Work on the date set forth in the Job Order. Time being of the essence, the Contractor shall thereafter prosecute the Work diligently, using such means and methods of construction as will assure Final Completion within the Job Order Completion Time set forth in each Job Order.
- B. Supervision/Superintendent: The Contractor shall supervise and direct the Work, using his best skill and attention and he shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work.
1. The Contractor shall keep on the Site, during the performance of all Work, a competent, foremen/superintendent who is fluent in English, and any necessary assistants, all satisfactory to FW. The Contractor's project manager/project lead (if different than the foremen/superintendent) must also be fluent in English. Neither the foremen/superintendent nor the project manager/project lead shall be changed for the length of a Job Order Project, except with the prior consent of FW, unless he/she proves to be unsatisfactory to the Contractor and ceases to be in his employ. The on-site superintendent shall represent the Contractor and have authority to act for the Contractor.
- C. Project/Contract Meetings: The Contractor and Subcontractors or their qualified representatives shall attend meetings with FW's representatives, at a frequency as determined by FW, for the purpose of coordinating or expediting the Work.

**2.12 Progress Schedules / Job Order Completion Time**

- A. To enable the Work to be laid out and prosecuted in an orderly and expeditious manner, the Contractor shall submit with each Price Proposal a Progress Schedule, in bar chart or critical path method form, showing:
1. The anticipated time of commencement and completion of each of the critical operations/subdivisions of the Work to be performed under the Job Order;
  2. The sequence and interrelationship of each of these operations/subdivisions with the others and with those of other related Job Orders (if any); and,
  3. The estimated time required for fabrication or delivery, or both, of critical materials and equipment required for the Work.
- B. Progress Schedules will be negotiated separately for each Job Order. The Contractor's proposed Progress Schedule shall be revised as necessary and as directed by FW, until finally approved by FW, and after such approval, shall be strictly adhered to by the Contractor.
- C. Project/Contract Meetings: Each Job Order issued shall contain a Notice to Proceed Date (NTP) and a Job Order Completion Time stated in calendar days. The Applicability of Liquidated Damages will be determined on a Job Order by Job Order basis and be communicated on the Request for Price Proposal (RFPP) and the applicability stated on the Job Order. The amount of Liquidated Damages, if applicable, shall be per the schedule contained at Section 6.11.B herein.

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The Job Order Completion Time shall include Work to be performed by others under subcontract and provide ample time for anticipated inspections.

- D. If the Contractor fails to adhere to the approved Progress Schedule, he must promptly adopt such other or additional means and methods of construction as will make up the time lost and will assure Final Completion in accordance with such Progress Schedule.
- E. If the Job Order Completion Time is determined to be so short that a Progress Schedule is not necessary or useful (as solely determined by FW) the requirement to submit a Progress Schedule with the Price Proposal Package may be waived in its entirety. However, the Contractor will communicate a proposed Job Order Completion Time (in calendar days) with the submission of the Price Proposal Package.

### 2.13 Date for Completion

The Contractor must complete the Work within the Job Order Completion Time specified in each Job Order.

### 2.14 Determining Date of Final Completion

- A. Final inspection of the Work by FW shall be made within five (5) days after receipt of the Contractor's written request. The Work will be deemed finally complete as of the date of such inspection if, upon such inspection, FW determines that the Contractor has achieved Final Completion of the Job Order.
- B. However, if such inspection, in the sole opinion of FW, reveals items of Work still to be performed, the Contractor shall promptly perform them and then request a re-inspection.

### 2.15 Delays

Time is of the essence. If delay is foreseen, the Contractor shall give immediate written notice to the Division of Procurement. FW has the right to extend the Job Order Completion Date if reasons appear, in the sole judgment of FW, to be valid. Contractor must keep FW advised at all times of the status of the Job Order Progress Schedule. Failure to achieve Final Completion within the Job Order Completion Time (without accepted reasons) or failure to meet Specifications, may result in assessment of Liquidated Damages (applicable on a Job Order By Job Order basis) and FW right to enforce other rights and remedies against Contractor, and authorizes the Division of Procurement to purchase materials, equipment and services elsewhere and charge full increase in cost and handling to defaulting Contractor.

### 2.16 Liquidated Damages

- A. The applicability of Liquidated Damages shall be determined on a Job Order by Job Order basis, at the sole discretion of FW, and at the time the Request for Price Proposal is issued by FW.
- B. If Liquidated Damages are deemed to apply to a specific Job Order, FW will assess the amount of Liquidated Damages on a project by project basis to adjust the daily LD amount based on the risk associated with the project. This provision for Liquidated Damages does not bar FW's right to enforce other rights and remedies against Contractor, which are otherwise legally enforceable, including but not limited to, specific performance or injunctive relief.

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- C. The applicability of the Liquidated Damages will be discussed with the Contractor at the Joint Scope Meeting and, if applicable, will be set forth thereafter in the Request for Price Proposal and in the Job Order. In the event the Contractor fails to complete the Work within the Job Order Completion Time, or if the Contractor, in the sole judgment of FW, has abandoned the Work, the Contractor must pay to FW the sum fixed in the table immediately above for each and every calendar Day that the time consumed in completing the Work exceeds the Job Order Completion Time, which said sum, in view of the difficulty of accurately ascertaining the loss which FW will suffer by reason of delay in the completion of the Work hereunder, is hereby fixed and agreed as the Liquidated Damages that FW will suffer by reason of such delay, and not as penalty.
- D. Liquidated Damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of FW's right to indemnification under Section 6.22, or the Contractor's obligation to indemnify FW, or to any other remedy provided for by Agreement or by law.
- E. FW will deduct and retain out of the monies which may become due hereunder, the amount of any such Liquidated Damages; and in case the amount which may become due hereunder shall be less than the amount of Liquidated Damages suffered by FW, the Contractor shall be liable to pay the difference upon demand by FW.
- F. The Contractor hereby waives any defense as to the validity of any Liquidated Damages stated herein as they may appear on grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

**2.17 Time Extensions for Weather**

- A. The Job Order Completion Time applicable to each Job Order will not be extended due to inclement weather conditions that are normal to the general locality of Work Site. The Job Order Completion Time applicable to each Job Order includes an allowance for workdays (based on a five (5) day workweek) which, according to historical data, may not be suitable for construction work.
- B. The following is the schedule of monthly anticipated normal inclement weather workdays for the Project location (applicable to each and every Job Order) and will constitute the base line for monthly weather time extension evaluations.

ANTICIPATED NORMAL INCLEMENT WEATHER WORKDAYS INCLUDED IN THE CONTRACT TIME OF PERFORMANCE											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7	7	7	7	9	7	7	7	6	6	6	7

- C. The Contractor, in his planning and scheduling of the Work as required by the Contract Documents, shall allow for the normal inclement weather for the locality of the Work Site. If the Contractor believes that the progress of the Work has been adversely affected and that it will directly result in a failure to achieve Final Completion within the Job Order Completion Time, as a result of weather conditions above and beyond the amount normally expected, he shall submit a written request to FW for an extension of the Job Order Completion Date.

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- D. The Contractor shall not be entitled to any money damages whatsoever for any delays resulting from inclement weather, whether normal or abnormal, foreseeable or unforeseeable. The Contractor and FW stipulate and agree that for delays due to weather the Contractor's sole relief is a time extension granted in accordance with this Section 6.9 Time Extensions for Weather.

### 2.18 Changes in the Work

- A. FW Right to Make Changes: FW, without invalidating the Agreement, may at any time change the Detailed Scope of Work referenced in a Job Order by ordering additions to, deletions from, or modifications to the Work. The original Job Order will remain the same and a supplemental Job Order will be developed in accordance to the Ordering Procedure (Section 6.3) for developing all Job Orders set forth in the Agreement. The Contractor hereby expressly agrees that the Contractor shall have no right to a claim for damages or extended overhead because of changes made by FW. All such changes shall be performed under the conditions of the original Job Order and the underlying Agreement, except that any claim for extension of Job Order Completion Time caused thereby shall be adjusted at the time of signing of the Supplemental Job Order. All such changes in the Detailed Scope of Work shall be authorized only by a Supplemental Job Order signed by FW.
- B. Cost to FW for Changes: The cost or credit to FW resulting from a change in the Detailed Scope of Work shall be calculated in accordance to the Ordering Procedure (Section 2.7).

**END OF SPECIFICATIONS & SCOPE OF WORK**

**SECTION 00700**

**IFB 25-019  
JOB ORDER CONTRACTING (JOC) CONSTRUCTION SERVICES**

**GENERAL CONDITIONS**

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ARTICLE 2	CONTRACTOR'S RESPONSIBILITY
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ARTICLE 22	TAX EXEMPTION

## ARTICLE 1 - DEFINITIONS

A. Definitions: Whenever used in the Contract Documents, the following terms will have the meanings set forth below, which are applicable to both singular and plural forms thereof:

"ADDENDUM" or "ADDENDA" means additional contract provisions issued in writing by the OWNER prior to the due date for the submission of Bids.

"ARCHITECT" means the licensed design professional engaged by Fairfax Water to act as such and designated to observe the performance of the Work of the Contractor and to consult with and advise Fairfax Water during construction, acting directly or through duly authorized representatives. The terms "Architect" and "Engineer" are used interchangeably in these Contract Documents.

"AUTHORIZED REPRESENTATIVE" means a representative of the Owner or the Engineer acting within the scope of his or her duties.

"AWARD LETTER" means a letter issued by Fairfax Water to the Contractor, providing notice of the award of the Contract.

"BENEFICIAL USE" means the stage in the progress of the Work at which the Engineer and Owner agree that construction of the Work, or specified part thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by the Owner for the purposes for which it was intended. Project-specific requirements for Beneficial Use may be set forth in the Agreement, Section 00500.

"BID" or "BID FORM" means the offer of a Bidder to provide specific goods and/or services in accordance with all terms, conditions and specifications indicated in a solicitation.

"BIDDER" means the corporation, limited liability company, partnership or other entity which submits a Bid to Fairfax Water for performance of the Work.

"CHANGE ORDER" means a document in the form attached to these General Conditions as Exhibit 1 issued after the effective date of the Contract. Once signed by the Owner and the Contractor, a Change Order: (a) authorizes any combination of an addition to, deletion or revision of the Work, including any associated adjustment to the Contract Sum and/or adjustment to the Contract Period; and (b) is incorporated into and becomes part of the Contract Documents.

"CONTRACT" or "CONTRACT DOCUMENTS" means and refers to the documents listed in Article 3.A.1 of these General Conditions. The terms "Contract" and "Contract Documents" are used interchangeably.

"CONTRACT DRAWINGS" or "DRAWINGS" means a graphic representation included among the Contract Documents, typically drawn to scale, showing technical information, design, location, and dimensions of elements of the Work.

"CONTRACT ITEM" means a component of the Work required or described in the Contract Documents. The term "Item" as used in the Specifications (Section 01200, Measurement and Payment) shall have the same meaning and be used interchangeably with the term "Contract Item."

"CONTRACT PERIOD" means the total number of days specified in the Agreement, Section 00500, for achieving Final Completion of the Work, as such period may be adjusted from time to time in accordance with the Contract Documents.

"CONTRACT SUM" means the total compensation payable to the Contractor for performing the Work in accordance with the Contract Documents. Such amount is determined by reference to the Contractor's Bid Form and subject to modification from time to time in the manner provided herein.

"CONTRACTOR" means the corporation, limited liability company, partnership or other entity with whom Fairfax Water has entered into a Contract for performance of the Work.

"CRITICAL PATH" means the longest continuous, sequential duration of dependent activities from the date of commencement of the Contract Period (as established by the Notice to Proceed) to the Date of Beneficial Use, which indicates the minimum overall time necessary to complete the Work. A delay of any activity along the Critical Path will result in a delay to the Date of Beneficial Use unless the duration of a subsequent activity on the Critical Path is reduced to offset the delay and maintain the Date of Beneficial Use.

"DATE OF BENEFICIAL USE" shall be the date upon which the Engineer certifies in writing that Beneficial Use has been achieved.

"DAY" means a calendar day.

"DEFECTIVE" is an adjective that, when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the requirements of the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to the determination of Final Completion of the Work (unless responsibility for the protection thereof shall have been assumed by Fairfax Water following the Date of Beneficial Use).

"DIVISION" means a designated portion of the Project.

"ENGINEER" means the licensed design professional engaged by Fairfax Water to act as such and designated to observe the performance of the Work of the Contractor and to consult with and advise Fairfax Water during construction, acting directly or through duly authorized representatives. The terms "Engineer" and "Architect" may be used interchangeably in these Contract Documents.

"EXTRA WORK" means work (other than that required either explicitly or implicitly by the Contract in its original form) which is authorized by Change Order or Work Order.

"FAIRFAX WATER" has the same meaning as "OWNER" and in either case shall refer to the Fairfax County Water Authority.

"FINAL COMPLETION" means the full performance of all Work in strict accordance with the terms and conditions of the Contract Documents, including the completion of all items identified on punch lists generated through the inspections set forth in Article 8 hereof and submission of all information, manuals, warranties and documentation required by the Contract.

"FURNISH" and "PROVIDE" means to supply and equip so as to be ready for its intended use in accordance with the requirements of the Contract Documents. Unless otherwise expressly specified, any item that is to be furnished or provided hereunder is required to be installed by the Contractor in accordance with all applicable requirements of the Contract Documents. The terms "furnish" and "provide" are used interchangeably in these Contract Documents."

"GENERAL MANAGER" means the General Manager of Fairfax Water, or his or her designee.

"INSTALL" means put in place and ready for its intended use in accordance with the requirements of the Contract Documents. Installation shall include but not be limited to: (a) the provision of all required spare parts, all operation and maintenance manuals, all maintenance summaries, all certificates of proper installation, and documentation of the satisfactory completion of all testing requirements; and (b) the completion of all other specified services, including but not limited to any staff training requirements.

"LAWS AND REGULATIONS" or "LAWS OR REGULATIONS" means any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

"MEMBERS" means the members of the governing Board of the Fairfax County Water Authority.

"NOTICE" means written notice. Unless otherwise provided herein, Notices must be hand delivered, sent by email, sent by first class mail, postage prepaid, or sent by nationally recognized express courier service. Notices will be effective upon receipt if hand delivered or sent by email (with confirmation of receipt), three (3) Days after mailing if sent by mail, and one (1) Day after dispatch if sent by express courier, to the addresses, individuals, and/or emails set forth below:

If to the Contractor:

The Contractor's office at the Project or to the business address or email address of the Contractor as stated on its Bid Form or otherwise provided for such purpose, or if delivered in person to the Contractor, to the Contractor's foreman or superintendent for the Project, or any officer or director of the Contractor.

If to the Owner:

Director Planning & Engineering  
Fairfax Water  
8570 Executive Park Avenue  
Fairfax, Virginia 22031

Attention: Director of Planning & Engineering

Email Address for Owner: [natapoor@fairfaxwater.org](mailto:natapoor@fairfaxwater.org)

Either party may, by written notice delivered in the manner prescribed herein, change its address for receipt of Notices hereunder.

"NOTICE TO PROCEED" means the Notice issued by Fairfax Water to the Contractor establishing the date of commencement of the Contract Period. The Notice to Proceed will identify the date for completion of the Work (and expiration of the Contract Period) if not otherwise specified in the Contract Documents.

"OVERHEAD" means the cost of administration, field office and home office costs (including extended costs), general superintendence, office engineering and estimating costs, other required insurance, safety requirements, reproduction, preparing proposals and schedule updates, changes to sequencing of Work, disruption of Work, materials used in temporary structures (not including form work), additional premiums on the performance and payment bonds of the Contractor, the use of small tools, scheduling costs, cumulative impact costs and all other costs incidental to the performance of a change in the Work or to the cost of doing business. Small tools are defined as any tool with a replacement value less than \$1,000.

"OWNER" means the Fairfax County Water Authority, a public body politic and corporate organized and existing under the laws of the Commonwealth of Virginia and doing business as "Fairfax Water."

"PROJECT" means the entire improvement which is the subject of the Contract.

"SAMPLES" means the physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work shall be judged.

"SHOP DRAWINGS" means the drawings, diagrams, illustrations, schedules, installation descriptions, and other data or information prepared by or for the Contractor and submitted by the Contractor to provide detailed information for the fabrication, location, erection, installation, connection and methodology associated with the Work. Shop Drawings are intended to aid in the preparation and installation of materials and to ascertain that the materials proposed by the Contractor conform to the requirements of the Contract Documents. Shop Drawings are not Contract Drawings as so defined.

"SITE" means the area upon or in which the Contractor's operations are performed and such other areas adjacent thereto as may be designated as such by the Engineer.

"SPECIFICATIONS" means the part of the Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship for the Work.

"SUBCONTRACTOR" means any person or entity, other than an employee of the Contractor, who has a direct contract with the Contractor to furnish, or who actually furnishes labor, materials, services, or equipment or any combination of labor, materials, services and equipment to the Contractor or other subcontractors in connection with the Work. Unless otherwise provided, the term "Subcontractor" includes Suppliers.

"SUPPLIER" means a manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or any Subcontractor, but who does not provide onsite labor.

"SURETY" means any person or entity that has executed as a surety the Contractors Performance Bond, Payment Bond, Maintenance Bond or all three , securing the Contractor's performance of this Contract and/or the payment of his obligations in connection herewith.

"WORK" means everything explicitly or implicitly required to be furnished and performed by the Contractor pursuant to the Contract Documents, including any Extra Work that has been incorporated by Change Order.

"WORK ORDER" means a written directive to the Contractor issued on or after the Effective Date of the Agreement and signed by the Owner and recommended by the Engineer ordering an addition, deletion, or revision in the Work.

"DIRECTED," "PERMITTED," "ORDERED," "DESIGNATED," "PRESCRIBED" and words of like import when used means the direction, requirement, permission, order, designation, or prescription of the Owner or the Engineer. "ACCEPTABLE," "SATISFACTORY," "IN THE JUDGMENT OF," and words of like import when used means acceptable to, satisfactory to or in the judgment of the Owner or Engineer.

- B. Number and Gender of Words: Whenever the context so admits or requires, all references to one number shall be deemed extended to and including the other number, whether singular or plural, and the use of any gender shall be applicable to all genders.

## **ARTICLE 2 - CONTRACTOR'S RESPONSIBILITY**

A. Contractor's Responsibility:

1. The Contractor shall perform all of the Work and shall furnish, at its own cost and expense, all labor, materials, equipment, and other facilities, except as otherwise provided herein, as may be necessary and proper for performing and completing the Work in accordance with the Contract Documents. The Contractor shall be responsible for the entire Work until completed and finally accepted by Fairfax Water. Unless the specification text expressly states that another party will be responsible for performing certain activities or providing certain material, the Contractor shall be responsible for performing the Work. Among other things, the Contractor acknowledges its responsibilities with respect to shop drawings and the construction schedule as specified in the Contract Documents.
2. Unless otherwise expressly provided, all equipment, material, and accessories incorporated in the Work will be new and in first-class condition. Unless otherwise expressly provided, the Work must be performed in accordance with the best modern practice and with materials and workmanship of the highest quality in the industry, all as determined by, and entirely to the satisfaction of, Fairfax Water and the Engineer. All items

of Work shall be performed by persons skilled in the particular task or activity to which they are assigned. Poor or inferior workmanship (as determined by the Engineer, the Owner or other inspecting authorities) shall be removed and replaced at Contractor's expense such that the Work conforms to the highest quality standards of the trades concerned, or otherwise corrected to the satisfaction of the Engineer, the Owner, and other inspecting authority, as applicable.

3. The Contractor shall be solely responsible for supervising and directing the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction and for coordinating all portions of the Work, except where otherwise specified in the Contract Documents. The Contractor is solely responsible to the Owner that the finished Work complies with the Contract Documents. Neither Fairfax Water's approval nor its failure to exercise approval shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, nor shall Fairfax Water's approval or failure to approve create a cause of action for damages. Notwithstanding the rights and remedies retained by Fairfax Water and the Engineer hereunder, including without limitation, Fairfax Water's and the Engineer's right to monitor the progress of the Work and to accept or retract acceptance of Subcontractors, the Contractor expressly acknowledges and agrees that it is in charge of and in control of the Work.
4. The Contractor shall be solely responsible for health and safety precautions and programs for workers and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Engineer, the Owner, the Owner's employees and agents, or any other Person shall relieve the Contractor from its sole responsibility for compliance with the requirements of the Contract and its sole responsibility for health and safety programs and precautions for the Work.
5. The Contractor understands that for all or some of the Contract Period there may be other contractors on the site that are working under their own contracts with Fairfax Water. The Contractor acknowledges that it is obligated to coordinate its activities and to cooperate with such contractors and also affirms that it has included in its Bid price the full cost of doing so. The Contractor agrees that it will not make a claim against Fairfax Water for additional compensation as a result of unforeseen coordination costs arising from the activities of such other contractors except where such coordination results in an "unreasonable delay" as defined in Article 8 hereof.
6. If during its performance of the Work, the Contractor encounters physical and/or subsurface or concealed conditions at the Site which differ materially from the conditions set forth in the Contract Documents or otherwise known to, or reasonably anticipated by, the parties at the time the Contractor submitted its Bid for the Work, then the Contractor shall provide prompt Notice to the Owner and the Engineer no later than three (3) Days after discovery. The Engineer shall promptly review the conditions and propose such changes or adjustments, if any, in the Contract Documents that may be necessary to address them. The Contractor must request any change in the Contract Sum or Contract Period for such conditions pursuant to the applicable requirements in Articles 3 and 8 of these General Conditions. Compliance with the requirements of this Paragraph is a condition precedent to the Contractor's entitlement to any change or adjustment in the Contract Sum or Contract Period as a result of such Site conditions.
7. The Contractor shall in no event be or become entitled to receive additional compensation from the Owner based upon a claim following the submission of its Bid, or following its execution of the Contract, in connection (i) with the imposition or increase of any tax or charge not previously anticipated nor (ii) with any escalation in the cost of materials, equipment,

supplies, services, labor, permits, or any other items of expense associated with the Contractor's full and complete performance of the Work.

8. The Contractor hereby covenants and agrees that it does not, and shall not during the Contract Period, knowingly employ an unauthorized alien as such term is defined in the federal Immigration Reform and Control Act of 1986 or otherwise violate its provisions.
  9. The Contractor hereby represents and warrants as follows: (a) it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law; and (b) it will not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia, if so required under Title 13.1 or Title 50 of the Virginia Code, to be revoked or cancelled at any time during the term of this Agreement.
  10. The Contractor acknowledges and agrees that neither it nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work:
    - a. shall have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of the Engineer or Engineer's Consultant; or
    - b. shall have the right to reuse any of such Drawings, Specifications, other documents, or copies for any purpose without written consent of Fairfax Water and the Engineer and specific written verification or adaptation by the Engineer.
- B. Approval Requests: The Contractor shall submit to Fairfax Water in writing all items required to be brought to Fairfax Water's attention or to be submitted for approval. All such items must be submitted sufficiently in advance of the date upon which the information or approval is actually required by the Contractor to allow Fairfax Water to take appropriate actions so as not to delay the Work. The Contractor shall not have any right to an extension of time due to delays caused by his failure to submit any item in a timely fashion.

### **ARTICLE 3 - THE CONTRACT**

A. The Contract:

1. The following documents, except for such portions thereof as may be specifically excluded, and the titles, subtitles, headings, running headlines, and tables of contents contained therein constitute the Contract and are defined as the Contract Documents:

Instructions to Bidders  
Contractor's Completed Bid Form  
Award Letter  
Notice to Proceed  
Agreement  
Performance and Payment Bonds  
General Conditions  
Specifications  
Supplementary Conditions  
Drawings  
any Change Orders  
any Work Orders  
any Addenda, and

All provisions required by law to be included in this Contract, regardless of whether such provision is set forth herein or not.

The Contract Documents will in no event be deemed to include any soil, geotechnical or other reports, or any surveys or analyses of any type which may be included within the appendices or otherwise provided to the Contractor in connection with this Project. Such items, if provided by Fairfax Water, shall be for information only and may not be relied upon for any purpose by Contractor.

2. The Contract Documents are intended to be complementary, and what is called for or required by any one part is as binding as if called for or required by all. The Contractor has

a duty to thoroughly review the Contract Documents and to identify any conflicts, errors, or ambiguities therein. The Contractor must promptly report any conflict, error, ambiguity, or discrepancy in the Contract Documents to the attention of Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and to the Engineer, in each case in writing, before proceeding with the Work affected thereby. Fairfax Water will resolve the matter in writing. Work performed by the Contractor after issuance of the Notice to Proceed and prior to written resolution thereof by Fairfax Water, shall be performed at the Contractor's own risk. In resolving such conflicts, errors, ambiguities and discrepancies, the Contract Documents shall be accorded the following order of precedence:

- Work Orders
- Change Orders
- Notice to Proceed
- Award Letter
- Addenda
- Supplementary Conditions
- General Conditions
- Agreement
- Instructions to Bidders
- Specifications
- Contract Drawings
- Contractor's Completed Bid Form

- 3.

The drawings and specifications are divided into sections solely for purposes of convenience and clarity. The Contractor shall not construe such sections as a division of the Work into various subcontractor units. The Contractor is responsible for furnishing all Work as shown on the drawings and in the specifications.

- 4.

Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

- a. the provisions of any standard, specification, manual, code, or custom of any technical society, organization or association (whether or not specifically incorporated by reference in the Contract Documents); or
- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

- B. Entire Contract: This Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements, both written and oral, between or among the parties with respect to the subject matter hereof. This Contract may not be modified or amended except by written agreement signed by the Contractor and Fairfax Water or by a written directive issued by Fairfax Water in the manner prescribed herein.

- C. Contractual Claims:

1. If the Contractor wishes to make a contractual claim, whether for extra compensation, damages or any other relief, he shall give Fairfax Water Notice in strict accordance with the provisions of paragraph 3.E.1 herein. The Contractor's failure to comply strictly with the requirements of paragraph 3.E.1 shall result in waiver of the claim.
  2. Resolution of any outstanding claims, counterclaims, disputes and other matters in question arising out of or relating to the Contract Documents to the extent not resolved by the parties hereto, shall be decided by a court of competent jurisdiction in the Commonwealth of Virginia; provided, however, that nothing contained herein shall be construed to invalidate the finality of Fairfax Water's decisions. Fairfax Water and the Contractor hereby waive any right they may have to a jury trial in connection with the resolution of any such claim, counterclaim, dispute or other matter arising out of or in connection with the Contract Documents.
- D. No Claims Against Individuals: No claim shall be made by the Contractor against any officer, Member, Authorized Representative or employee of Fairfax Water or the Engineer for, or on account of, anything done or omitted to be done in connection with this Contract, and the Contractor shall be strictly liable for all costs, attorneys' fees and expenses incurred by any individual or entity who is sued in violation of this section.
- E. Disputes: In order to: (i) clearly identify the existence of a dispute between the parties and (ii) promote the prompt, efficient and fair resolution of each such dispute, the parties shall adhere strictly to the claims resolution procedure set forth below. Time is of the essence in meeting these requirements.
1. If the Contractor wishes to dispute any Work that is required, necessitated, or ordered by the Engineer or Fairfax Water, or otherwise to claim that any action required or ordered by the Engineer or Fairfax Water to be taken or not to be taken violates the terms and provisions of this Contract, then the Contractor shall proceed with such Work and/or comply with such requirement or order without delay and shall, within five Days after the earlier of (a) commencing such Work, or (b) receiving notice of such requirement or order, notify Fairfax Water and the Engineer, in writing, of his claim with respect thereto and request a written determination thereof. In order to invoke the procedures of this section, the Contractor's request must: (i) refer specifically to this section by number; (ii) be submitted in writing to Fairfax Water's Project Manager and Fairfax Water's Manager of Construction Department; (iii) contain a full explanation of the basis of the Contractor's claim or dispute and the rationale for its request, including accurate copies of all supporting documentation; and (iv) detail the quantum of any relief requested by the Contractor and provide substantiation of all amounts. No request for a Change Order, request for change proposal, or other requested modification shall be sufficient, on its own or collectively, to satisfy, or to defer the commencement of, the notice requirements set forth in this Paragraph 3.E.1. Fairfax Water shall issue a written determination with regard to any such claim on or before the date that is 30 Days after the date of its receipt of the Contractor's written request; provided, however, that in the event that Fairfax Water determines, based upon the size or complexity of the claim at issue, that additional time is required for the issuance of a response, Fairfax Water shall issue written notice of such finding to the Contractor within 30 Days following the date of its receipt of the Contractor's written request and shall issue a written determination with regard to such claim on or before the date that is 45 Days after the later of (i) the date of Fairfax Water's receipt of the Contractor's written request or (ii) the Contractor's submission of all supplemental information requested by Fairfax Water. The Contractor's failure to submit promptly any supplemental information requested by Fairfax Water shall result in the waiver of the claim. In the event that the Contractor disagrees with Fairfax Water's written determination, then the Contractor may request a review and reconsideration of that decision by the General Manager by submitting a written request for review to the General Manager (with copies to Fairfax Water's Director of Planning and Engineering and Fairfax Water's Manager of Construction

Department) within five Days after the Contractor's receipt of Fairfax Water's initial written determination. In such event, the General Manager (or his authorized designee) shall issue a written final decision on behalf of Fairfax Water within 30 Days after his receipt of the Contractor's request for review. In the event that Fairfax Water fails to issue a written determination within any of the time periods specified herein, such failure shall be deemed to constitute a denial of the claim by Fairfax Water, effective upon the last day of the applicable time period without further administrative review by Fairfax Water. In order to preserve his right to claim compensation for such Work, or damages resulting from any compliance required of the Contractor under the preceding paragraph, the Contractor shall, within five Days after receiving notice of any determination and direction issued by or on behalf of Fairfax Water, notify Fairfax Water, in writing, that the Work is being performed or that the determination and direction is being complied with under protest. Failure of the Contractor to so notify Fairfax Water as provided herein shall constitute a waiver and release of the Contractor's right to claim compensation for any Work performed under protest or for any damages resulting from such compliance.

2. All monies owed and not in dispute will be made available to the Contractor in accordance with the Contract Documents. Any request for an extension of time in connection with disputed Work shall be governed by Article 8.
- F. Benefit of Agreement: The Contract Documents shall be enforceable and binding upon, and shall inure to the benefit of, the parties hereto, their respective successors and permitted assigns. The Contract is entered into for the sole benefit of the parties, and no other person or entity shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with, this Contract. Nothing contained herein, express or implied, is intended to or shall confer upon any other person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.
- 9.14 Relationship of the Parties. The Contractor will perform all obligations under the Contract as an independent contractor. Nothing herein contained shall be deemed to constitute any party a partner, agent or legal representative of the other party or to create a joint venture, partnership, agency or any relationship between the parties.

#### **ARTICLE 4 – NO WAIVER OR ESTOPPEL**

- A. No Estoppel: No action or failure to act by Fairfax Water (or its officers, agents or representatives) shall be construed at any time to estop Fairfax Water from: (a) demonstrating that its actions comply with the Contract Documents; (b) asserting that the Contractor has violated, or seeks relief that would violate, the terms of the Contract Documents; (c) showing the true and correct classification, amount, quality, or character of the Work performed, or that any determination, decision, acceptance, return certificate or payment is incorrect or was improperly made in any respect, or that the Work or any part thereof does not in fact conform to the requirements of the Contract Documents; and/or (d) demanding and recovering from the Contractor any overpayment made to him or such damages as Fairfax Water may sustain by reason of the Contractor's failure to comply with the requirements of the Contract Documents.
- B. No Waiver of Rights: Unless expressly provided otherwise in writing by the General Manager, Fairfax Water will not be deemed to have waived any rights or any provisions of the Contract Documents. By way of example, but without limitation, none of the following actions shall be construed as a waiver of any provisions of this Contract or of any powers provided herein:
1. Inspections conducted by Fairfax Water or the Engineer, any of its or their employees, officers or Authorized Representatives;
  2. Orders for the payment of money; and

3. Payments for, or acceptance of, all or any part of the Work.

In no event shall any waiver on the part of Fairfax Water of any breach of this Contract by the Contractor constitute or be construed to be a waiver of any subsequent breach of this Contract by the Contractor.

- C. Remedies Not Exclusive: The rights and remedies set forth in this Contract shall be in addition to, and not a limitation on, any and all rights and remedies which Fairfax Water has or may have at law or in equity. The parties acknowledge and agree that Fairfax Water will have the right to enjoin the Contractor against any breach of the terms of this Contract without any showing that such relief is necessary to avoid irreparable injury and/or that there is no adequate remedy at law.

## **ARTICLE 5 - ROYALTIES AND PATENTS**

- A. Patented Devices, Materials and Processes: The Contractor is responsible for obtaining all rights and licenses necessary to use any invention, article, appliance, process or technique of any kind in connection with the Work, and for paying all related royalties and license fees. The Contractor represents that the Contract Sum includes all such royalties and license fees. The Contractor shall indemnify and hold harmless Fairfax Water, its Members, officers, agents and employees, against any loss or liability for or on account of the infringement of any patent, copyright, or other intellectual property rights (collectively, the "IP Rights") in connection with any invention, process, technique, article or appliance manufactured or used in the performance of the Work, including any use by the Owner, unless such invention, process, technique, article or appliance is specifically named in the Contract Documents as being required for use in carrying out the Work. If, before using any invention, process, technique, article or appliance specifically named in the Specifications or Plans as being required for use in carrying out the Work, the Contractor has or acquires information that the same is covered by IP Rights making it necessary to secure the permission of the patentee, or other third party, for the use of the same, the Contractor shall promptly advise the Owner and the Engineer.

## **ARTICLE 6 - PROTECTION OF PERSONS AND PROPERTY**

- A. Safety and Protection:

1. Safety Precautions. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor covenants and agrees to take (and to cause its Subcontractors to take) every reasonable precaution at all times for the protection of all persons and property at or near the Site or that may be affected by the Work, including but not limited to:
  - a. Employees providing services in connection with the Work and other persons who may be affected thereby;
  - b. The Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and
  - c. Other property at the Site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
2. Compliance with Safety Laws and Regulations. The Contractor shall comply with all applicable laws, rules, regulations and ordinances relating to safety of persons and to protection of persons and property from damage, injury or loss. Applicable laws include, but are not limited to, the provisions of all rules and regulations governing health and 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. The Contractor shall immediately abate and resolve any violation of safety requirements or duties or any potential safety hazard that is known to the Contractor or that is brought to the attention of the Contractor by the Engineer, the Owner, or any other person.

3. **Proper Safeguards.** The Contractor shall provide and maintain at all times during performance of the Work all necessary and proper safeguards in and around the Work in order to protect all persons working, entering, or visiting in or near the Site from injury or loss, and to protect from theft and vandalism all Work, existing structures and facilities, materials, equipment, tools and personal property located at the Site or stored on or off Site for use in connection with the Work. The Contractor shall provide and maintain all passageways, guard fences, lights and other facilities for protection of persons and the Site and the Work as required by applicable laws, rules, regulations, and ordinance, or as specified in the Contract.
4. **Health and Safety Officer.** The Contractor shall designate and assign a responsible member of his organization whose duty shall be the prevention of accidents and the security of the Site for the duration of the Project. The designated Health & Safety Officer shall be present at the Pre-construction Meeting and during Project start-up, and shall make regular visits to the Site no less frequently than once per month during performance of the Work. In addition to such regular, periodic visits, the designated Health & Safety Officer also shall visit the Site as follows: (a) whenever the nature of the Work or the stage of construction calls for the presence of the Health & Safety Officer in connection with the performance of high risk elements, as determined by the Contractor's Health & Safety Plan; and (b) upon prior request by the Owner or the Engineer. The Health & Safety Officer shall have one of the following certification designations: Certified Safety Professional (CSP); Associate Safety Professional (ASP); Occupational Health and Safety Technician (OHST); or Construction Health and Safety Technician (CHST).
5. **Safety and Health Program Manual.** The Contractor shall have and maintain a Company Safety and Health Program Manual that meets all Federal, State and local safety and health requirements. The Contractor shall provide to all employees a site safety orientation and training course that identifies the site safety rules, regulations, policies, and procedures. In addition, all Federal, State and local safety training that is required, may be performed during the site safety orientation and training course.
6. **Material Safety Data Sheets.** The Contractor shall maintain Material Safety Data Sheets on the site for all materials supplied by the Contractors, Subcontractors, and Suppliers. The Contractor shall be responsible for coordinating any exchange of Material Safety Data Sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.
7. **Emergencies.** In emergencies affecting the health, safety or life of persons, or threatening loss or damage to the Work or property at the site or to adjoining property, the Contractor, without special instruction or authorization from Fairfax Water or the Engineer, is obligated to act promptly, at his discretion and risk, to prevent and/or minimize the threatened damage, injury, or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a written directive will be issued to document the consequences of such action. All costs associated with any such directive are solely the responsibility of the Contractor.

B. Protection:

1. Unless otherwise agreed in writing, the Contractor shall, until Final Completion of the Work, be under an absolute obligation to protect, and shall take all appropriate precautions to protect, the finished and unfinished Work against any damage, loss, or injury. Such precautions shall not relieve the Contractor from any and all liability and responsibility for loss or damage to the Work occurring before Final Completion. Such loss or damage shall be at the risk of and shall be borne by the Contractor, whether arising from acts or omissions of the Contractor or others and whether or not covered by any of the Contractor's insurance. In the event of any such loss or damage, the Contractor promptly shall repair, replace, and make good the Work without extension of time therefor, except as may be otherwise specified. The Contractor shall take special precaution throughout all his operations to guard against fire and shall reduce the amount of flammable materials stored at the Site to the minimum amount consistent with the proper handling and storing of such materials.
2. The provisions of this section shall not be deemed to create any right of action in favor of third parties against the Contractor, Fairfax Water, or the Engineer.
3. Nothing contained herein shall be construed to deny, restrict, or delay in any manner the ability of Fairfax Water or the Engineer to access or observe the Site or any portion of the Work.

**ARTICLE 7 - CHANGES IN THE WORK; RECORDS**

A. Minor Changes:

1. Fairfax Water reserves the right to make such minor additions, deletions, or changes to the Work as may be necessary in its sole discretion to complete the Work; provided, however, that no such additions, deletions or changes will materially affect the substance hereof or materially change the Contract Sum. This Contract will in no way be invalidated by any such additions, deletions or changes. No claim by the Contractor shall be made for loss of anticipated profits resulting from any such addition, deletion or change to the Work.
2. Construction conditions may require minor changes in the Work and equipment to be furnished and other Work to be performed hereunder. The Contractor, when ordered by Fairfax Water or Engineer, shall make such adjustments and changes in the locations and Work as may be necessary without additional cost to Fairfax Water, provided such adjustments and changes do not materially alter the character and quantity of the Work as a whole, or the Contract Sum, and provided further that Drawings and Specifications showing such adjustments and changes are given to the Contractor by Fairfax Water within a reasonable time before work involving such adjustment and changes is begun. Fairfax Water will be the sole judge of what constitutes a minor change for which no additional compensation will be allowed.
3. The Contractor shall be entitled to an extension of time for such minor changes only for the number of Days which Fairfax Water may determine to be necessary to complete such changes and only to the extent that such changes actually delay the completion of the Project, and then only if the Contractor shall have strictly complied with all the requirements of the Contract Documents, including without limitation Article 8, A, C, D, and Article 2, B hereof.

B. Extra Work:

1. Fairfax Water may, in its sole and absolute discretion and without notice to any Surety, at any time by a Change Order, or Work Order, require performance of Extra Work in the

form of a change or modification to the Work consisting of additions, deletions or other revisions to the general scope of Work in the Contract as it deems necessary or desirable. The Contractor hereby covenants and agrees to perform such Extra Work on the terms and conditions set forth in the applicable Work Order or Change Order, as the case may be, and hereby waives any claim, suit or cause of action of any nature based, in whole or in part, upon the allegation that any Extra Work ordered hereunder and/or any Work omitted pursuant to Article 7(C) hereof, individually or in the aggregate, constitute a cardinal change to, or other material deviation from, the Contract Documents and/or the Work contemplated thereby.

2. A Change Order or Work Order covering Extra Work will be valid only if issued in writing and signed by Fairfax Water's Authorized Representative, and the Extra Work so ordered must be performed by the Contractor. Any attempt by the Contractor to alter or modify a Change Order or to reserve a claim thereunder shall be void and of no legal effect. Each Change Order, when executed, shall constitute full and final compensation for all matters directly or indirectly related to or arising from the Extra Work ordered thereby, including, but not limited to, all Overhead, profit, and all other direct and indirect costs associated with the Extra Work and any and all adjustments (of whatever nature) to the Contract Sum or to the Contract Period attributable to the Extra Work. Such execution shall operate as a release by the Contractor of all demands and claims against Fairfax Water for additional compensation or an adjustment of the Contract Sum or the Contract Period for all things done or furnished in connection with the Extra Work.
3. The amount of compensation to be paid to the Contractor for any Extra Work so ordered will be determined as follows:
  - a. By such applicable unit prices, if any, as are set forth in the Contract; or
  - b. If no such unit prices are set forth, then by a lump sum or other prices mutually agreed upon by Fairfax Water and the Contractor; or
  - c. If no such unit prices are set forth in the Contract and if the parties cannot agree upon a lump sum or other unit prices, then by the actual and reasonable costs in accordance with the general requirements, as represented by the Technical Specifications for the Work, as estimated or otherwise determined by the Engineer.
4. Regardless of the manner in which the adjustment to the Contract Sum on account of Extra Work is determined, such adjustment shall be deemed to include all amounts whether direct, indirect or consequential resulting from the performance of the Extra Work, including, but not limited to, all Overhead and profit. The adjustment in the Contract Sum, if any, shall constitute full and mutual accord and satisfaction for all costs related to the change.
5. Whenever Extra Work is authorized in accordance with Article 7.B.3.c and is planned to be performed by the Contractor hereunder, the Contractor shall provide prior Notice to Fairfax Water and to the Engineer of the time and place for performance of all such Extra Work. Records of Extra Work performed hereunder, if any, must be submitted by the Contractor at the end of each Day to Fairfax Water and to the Engineer. Duplicate copies of accepted records shall be made and signed by both the Contractor or his representative and Fairfax Water and Engineer, and one copy shall be retained by each. Failure of the Contractor to submit (and to obtain signed acknowledgments for) such Extra Work records, as specified, shall constitute a waiver and release of the Contractor's right to claim compensation for such Extra Work.

6. Payment requests for approved and duly authorized Extra Work shall be included in the Contractor's monthly application for payment supported by receipted bills and submitted in accordance with Article 10 hereof.
  7. The Contractor shall be entitled to an extension of time for Extra Work duly authorized by Fairfax Water only for the number of Days required, in the opinion of the Engineer, to complete such Extra Work, and then only if the Contractor has strictly complied with all the requirements of the Contract Documents, including without limitation Article 8, A, C, D, and Article 2, B hereof.
- C. Omitted Work:
1. Fairfax Water may at any time by a written order require the omission of such Contract Work as it may find necessary or desirable in its sole and absolute discretion.
  2. An order for omission of Work will be valid only if signed by Fairfax Water's representative and the Work so ordered must be omitted by the Contractor. The amount by which the Contract Sum will be reduced shall be determined in accordance with the General Requirements.
- D. Audit: Fairfax Water and its Authorized Representatives will, until the expiration of three years from the date of final payment under this Contract, have the right to examine and copy those books, records, documents, papers and other supporting data in the possession or control of the Contractor which involve transactions related to this Contract or which otherwise permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein (the "Records"), and the Contractor hereby covenants to maintain the Records for such time and to deliver the Records to Fairfax Water within seven Days after its receipt of written request. The Contractor agrees that no claim for compensation shall be valid if the Contractor should fail to produce any supporting documentation requested by Fairfax Water under this section.

## **ARTICLE 8 - TIME PROVISIONS**

- A. Contract Period: The Contractor shall complete the Work within Contract Period.
1. The Contractor must commence Work within 10 Days after the date stated as the date to proceed in the Notice to Proceed. Time being of the essence with respect to this Contract, the Contractor shall prosecute the Work diligently, using such means and methods of construction as will secure Final Completion in strict accordance with the requirements of the Contract Documents and within the Contract Period.
  2. The actual Date of Beneficial Use will be established after all inspections and testing required under the Contract Documents have been performed to the satisfaction of Fairfax Water and the Engineer, and all other contractually required submittals have been reviewed and approved by Fairfax Water and the Engineer. The process for certifying Beneficial Use is set forth below.
    - a. When the Contractor considers the Work ready for its intended use, the Contractor shall notify Fairfax Water and Engineer in writing that the Work is complete and ready for inspection and testing to determine if Beneficial Use has been achieved.
    - b. Refer to Section 00500 Agreement Form for definition of Beneficial Use as applicable to this Project.
    - c. Inspection and testing shall take place within a reasonable time after receipt of the Contractor's notice, at such The inspection shall include a demonstration by the Contractor that all equipment, systems and operable components of the Project

function properly and in accordance with the Contract Documents. The inspection and testing shall determine whether Beneficial Use has been achieved and shall result in a written list of unfinished Work and defective Work, commonly referred to as a "punch list", which must be completed and corrected prior to Final Completion. If the Engineer considers the Work complete for Beneficial Use, the Engineer will prepare and deliver to Fairfax Water and the Contractor a notice of completion for Beneficial Use which shall establish the Date of Beneficial Use and include the punch list described above. If the Engineer does not consider the Work complete for Beneficial Use, the Engineer will notify the Owner and the Contractor in writing with a list of the deficiencies to be corrected or completed before such Work will be deemed complete for Beneficial Use.

- d. Fairfax Water will determine in its sole discretion whether Beneficial Use has been achieved within the applicable Contract Period milestone.
3. Inspection and testing for Final Completion inspection shall be conducted in the same manner provided with respect to the inspection and testing for Beneficial Use. The actual date of Final Completion will be established by Fairfax Water after final inspections have been completed and all other requirements of the Contract Documents have been satisfied, including the completion of punch list items, submission of all required documentation, and correction of all defective Work. Fairfax Water will determine in its sole discretion whether Final Completion has been achieved within the Contract Period.
4. If one or more re-inspections are required for Beneficial Use or Final Completion, the Contractor shall reimburse the Owner for all costs of re-inspection or, at the Owner's option, the costs may be deducted from payments then or thereafter due to the Contractor.

B. Liquidated Damages:

1. Fairfax Water and the Contractor hereby acknowledge and agree that time is of the essence with respect to this Contract and that in the event the Contractor fails to complete the Work within the Contract Period, Fairfax Water will incur actual and considerable monetary damage.
  - a. Fairfax Water and the Contractor hereby acknowledge and agree that the stipulated amount per Day set forth in the Agreement Form (Section 00500) is reasonably in proportion to the probable loss to Fairfax Water and that amount per Day is hereby agreed upon as the liquidated damages for each and every Day that the time consumed in completing the Work exceeds the time allowed.
2. This amount shall in no event be considered as a penalty or otherwise than as the liquidated and adjusted damages to Fairfax Water because of the delay, and the Contractor and his Surety hereby agree that the stated sum per Day for each such Day of delay shall be deducted and retained out of the monies which may become due hereunder and if not so deducted, the Contractor and his Surety shall be liable for such amount. The Contractor and his Surety hereby waive any defense as to the validity of any liquidated damages stated herein on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

C. Extension of Time:

1. Delays to Progress of Work. The parties to this Contract wish to provide a framework for resolving issues in connection with any delays that may occur on this Project. No extension of the Contract Period will be effective unless granted in writing, and signed by Fairfax Water.

2. Non-Weather Delays. The required procedure for seeking an extension of time for delays other than those attributable to weather is set forth below.

a. Notice of Delay. In the event of a delay in the progress of the Work, the Contractor must give written Notice of Delay to Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and the Engineer within two Days after the commencement of the delay and in strict accordance with these General Conditions. Each such notice shall:

- (i) be identified as a "Notice of Delay;"
- (ii) be submitted in written, narrative form on the Contractor's letterhead;
- (iii) describe, in reasonable detail, the nature of the delay encountered; and
- (iv) set forth the date of the commencement of the delay.

Neither a schedule update nor meeting minutes shall in any event be deemed to be sufficient, on its own or collectively, to satisfy the notice of requirements set forth in this Paragraph 8.C.2. In the case of a continuing cause of delay, only one notice shall be required.

b. Application for Extension of Time. In order to seek an extension of time for a delay described in a Notice of Delay submitted in accordance with the preceding paragraph, the Contractor must submit a written Application for Extension of Time to Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and the Engineer not more than 20 Days after the commencement of such delay. Each Application for Extension of Time shall:

- (i) be identified as an "Application for Extension of Time;"
- (ii) be on the Contractor's letterhead;
- (iii) describe in reasonable detail the reasons for and causes of the delay;
- (iv) demonstrate in a clear and convincing fashion the extent to which, if any, the delay impacts the Critical Path for the Project; and
- (v) contain a justification for each additional Day which is requested.

If the delay continues for longer than 20 Days, the Contractor must submit the substantiation and support for such delay no less frequently than in 20-Day increments.

c. Entitlement to Extension of Time. The Contractor shall be entitled to an extension of time for delay in completion of the Work if obstructed or delayed in the commencement, prosecution or completion of any part of the Work on the Critical Path by any act or delay of Fairfax Water, or by acts or omissions of other contractors on the Project (other than Subcontractors of any tier), or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes that, in the opinion of Fairfax Water, are entirely beyond the expectation and control of the Contractor. The Contractor shall, however, be entitled to an extension of time for such causes only for the number of days of delay which Fairfax Water determines to be due solely and exclusively to such causes and only to the extent that such occurrences actually and adversely impacted the Critical Path for the Project, and then only if the Contractor shall have strictly complied with all of the requirements of these Contract Documents.

4. Weather Delays. The Contract Period will be adjusted to account for unusually severe weather conditions that prevent or inhibit the Contractor's performance of any part of the Work that is on the Critical Path indicated on the Schedule (such unusually severe weather conditions referred to herein as "Inclement Weather"). It is the intent of this provision to offset the impact of Inclement Weather with unusually favorable weather conditions that immediately precede and/or follow the occurrence of Inclement Weather. The Contractor shall notify Fairfax Water in writing of the occurrence of Inclement Weather within two Days after the onset of such Inclement Weather and shall describe in reasonable detail the type of Inclement Weather encountered by the Contractor and the Critical Path activities of the Work thereby interfered with or interrupted. Such notice shall be submitted to Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and the Engineer in written, narrative form, and not in the form of a schedule update. The Engineer and Fairfax Water will determine the Contractor's entitlement to an extension of the Contract Period for Inclement Weather by adding to the beginning and the end of the period of Inclement Weather a number of Days equal to the total number of Days of Inclement Weather (the "Inclement Period"), but in no event fewer than 15 Days and comparing the Inclement Period with the identical period for the five years preceding the Inclement Period (the "Comparison Period") based upon the accumulated record monthly or daily mean values (the choice of monthly or daily values being made by the Engineer in his sole and absolute discretion) from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for Washington Dulles-International Airport or Washington National Airport, whichever is closest to the Project; provided, however, that in no event shall the Inclement Period include Days outside the Contract Period. The Contractor shall be entitled to an extension of the Contract Period only in the event and to the extent that the total number of Days of Inclement Weather during the Inclement Period exceeds the total number of Days of similar types of weather conditions during the Comparison Period.
5. Process for Review of Denial of Extension of Time. In the event the Contractor is denied an extension of time hereunder, he may contest such decision by submitting written notice to Fairfax Water's Director of Planning and Engineering (with copies to Fairfax Water's Manager of Construction Department, Fairfax Water's Project Manager) and to the Engineer within five Days after the issuance of such denial, stating in detail his reasons for disagreement and submitting all information referenced in clauses (iii) and (iv) of Paragraph 3.E.1. of these General Conditions. The Contractor shall provide the Engineer and Fairfax Water with all substantive information that supports the Contractor's claim for an extension of time, together with any supplemental information requested by the Engineer and/or Fairfax Water. The Contractor must address all elements of Fairfax Water's denial of such time extension. No claim for an extension of time under this provision will be valid (and will be deemed to have been waived) unless submitted in strict accordance with the requirements set forth herein.
6. Except as otherwise provided in paragraph 8.C.8, delays caused by the failure of the Contractor's materialmen, manufacturers, and dealers to furnish approved shop drawings, materials, fixtures, equipment, appliances, or other fittings on time or the failure of Subcontractors to perform their Work in conformity with the approved progress schedule shall not constitute a basis for extension of time.
7. Except as expressly set forth in paragraph 8.C.8. hereof, no claim for payment, compensation or adjustment of any kind (other than the extensions of time provided for herein) shall be made or asserted against the Owner by the Contractor for costs or damages caused by hindrances or delays from any cause, whether such hindrances or delays be avoidable or unavoidable, and the Contractor shall make no claim for damages by reason of any such hindrances or delays, and will accept in full satisfaction of such hindrances or delays an extension of time to complete performance of the Work as specified.

8. Unreasonable Delays. Notwithstanding the provisions of paragraph 8.C.7., nothing contained herein is intended to, or shall have the effect of, waiving, releasing or extinguishing any rights of the Contractor to recover costs or damages for an unreasonable delay in performing this Contract, either on its behalf or on behalf of a Subcontractor, if and to the extent that such delay is caused by acts or omissions of Fairfax Water, its agents or employees, and due to matters within their control (such a delay referred to herein as an "Unreasonable Delay") and impacts the Critical Path. An Unreasonable Delay does not include an act on the part of Fairfax Water, its agents or employees that is permitted or required by this Contract. In order to seek costs or damages in connection with any such unreasonable delay, the Contractor must comply fully with each of the requirements set forth in paragraph 8.C.1. hereof, and shall identify each notice of delay and application for extension of time submitted hereunder, respectively, as a "Notice of Delay and Additional Costs" and as an "Application for Extension of Time and Additional Costs." Each Notice of Delay and Additional Costs shall contain, in addition to the requirements set forth in paragraph 8.C.1.:

(i) a description of the nature of the monetary loss or damage associated with the Unreasonable Delay

(ii) a description of the cause of the delay, with a clear explanation as to why the delay constitutes an "Unreasonable Delay," as defined above, and

(iii) a clear demonstration that the Unreasonable Delay impacts the Critical Path.

In addition to the requirements set forth in paragraph 8.C.1., each Application for Extension of Time and Additional Costs shall demonstrate in a clear and convincing fashion: (i) that the delay was an "Unreasonable Delay," as defined above; (ii) the number of Days of extension requested; (iii) a calculation of the additional compensation sought, with substantiation in the form of itemized data and records demonstrating that the costs incurred by the Contractor are directly attributable to the Unreasonable Delay; and (iv) an analysis of the impact of the Unreasonable Delay on the Critical Path.

9. In the event it is determined that the Contractor (either on its behalf or on behalf of a Subcontractor) is entitled to additional compensation on account of any such Unreasonable Delay, the amount thereof shall equal the actual costs incurred by the Contractor as a direct result of the Unreasonable Delay (as determined by the Engineer based upon information that includes but is not limited to the information submitted by the Contractor with its Application for Extension of Time and Additional Costs), subject to the LD Cap (as hereinafter defined). The amount payable to the Contractor as a direct result of the Unreasonable Delay will not exceed the LD Cap. As employed herein, the "LD Cap" means the liquidated damages amount set forth in the Supplemental Conditions (Section 0800), multiplied by the number of Days of Unreasonable Delay for which the Contractor is entitled to compensation hereunder. The parties hereby acknowledge and agree that the amount provided hereunder represents full and final compensation for all losses, costs and damages incurred in the aggregate by the Contractor and its Subcontractors (if any) in connection with an Unreasonable Delay and that neither the Contractor nor any Subcontractor will in any event submit a claim or seek further or additional compensation in excess of such amount. The parties further acknowledge and agree that the LD Cap is reasonable and equitable in all respects, and that it applies not as a penalty but as a means of providing both parties with a measure of certainty in the event of an Unreasonable Delay.

10. In the event that the Contractor makes a claim against Fairfax Water for costs or damages due to Unreasonable Delays caused by Fairfax Water, its agents and/or employees and such claim is determined to be false or to have no basis in law or otherwise is resolved in favor of Fairfax Water, in whole or in part, then the Contractor shall be liable to Fairfax

Water for a percentage of all the costs Fairfax Water incurs in investigating, analyzing, negotiating, and litigating the claim. The percentage for which the Contractor shall be liable shall be equal to the percentage of the Contractor's total delay claim that is determined through litigation or administrative procedures to be false or to have no basis in law or otherwise resolved in favor of Fairfax Water.

11. Any claim by the Contractor (either on its behalf or that of any Subcontractor or both) arising from or in connection with a delay that is not submitted in accordance with the requirements of Article 8 shall be null and void and deemed to have been waived by the claimant. No extension of time or additional compensation will be allowed hereunder unless the Contractor demonstrates that the delay directly impacted the Critical Path of the most current approved Project schedule and that all float has been consumed. No extension of time or additional compensation will be allowed if the Contractor failed to provide all notices and information in the manner and within the time periods set forth in this Article 8.

- D. Progress Schedule: The Contractor shall comply with the Schedule requirements as outlined in the General Requirements.

## **ARTICLE 9 - CONTRACTOR'S DEFAULT AND TERMINATION**

- A. Default by Contractor:

1. In the event of any one or more of the following (each, an "Event of Default"):
  - a. the Contractor fails to begin the Work when required to do so; or
  - b. at any time during the progress of the Work, the Contractor fails to prosecute the Work with reasonable speed, or fails to perform the Work in a diligent, efficient, skillful, or careful manner, or is delaying the Work unreasonably or unnecessarily; or
  - c. the force of workers or quality or quantity of material or equipment furnished is not sufficient to ensure completion of the Work within the specified time and in accordance with the Contract Documents; or
  - d. the Contractor fails to make prompt or proper payments to Subcontractors or others for materials or labor provided in connection with the Work; or
  - e. the Contractor fails in any manner of substance to observe the provisions of this Contract; or
  - f. any of the Work, or any of the machinery, supplies or equipment provided hereunder is defective and is not replaced as herein provided; or
  - g. the Contractor fails or refuses to comply with Laws or Regulations, or with written instructions of the Engineer or Fairfax Water;

then Fairfax Water, without prejudice to any other rights or remedies it may have hereunder, will have the right to declare the Contractor in default, in whole or in part, in accordance with this Article 9. Following occurrence of an Event of Default and prior to a declaration of a default hereunder, Fairfax Water shall notify the Contractor by written notice (a "Notice of Event of Default") describing the nature of the default and directing the Contractor to submit a remediation plan for cure of such default to Fairfax Water and to commence cure thereof within three Days after the date of notice, or within such longer period as Fairfax Water, in its sole discretion, shall determine and specify.

B. Declaration of Default:

1. In the event that the Contractor: (i) fails to submit a remediation plan that is acceptable to Fairfax Water and commence cure of the default described in the Notice of Event of Default within the period of time prescribed therein (or such longer period as Fairfax Water shall have agreed upon in writing); or (ii) following submission of an acceptable remediation plan, fails to prosecute cure of the default with reasonable diligence, then Fairfax Water will have the right to declare the Contractor in default by issuance of a written Notice (a "Declaration of Default") and to take any such other actions necessary to correct or complete the Work as set forth in this Article 9.
2. Immediately, but no later than three Days after receipt of a Declaration of Default hereunder, the Contractor shall discontinue all further operations on the Project or specified part thereof identified in the Notice of Default, shall immediately vacate the Site or such part thereof, leaving untouched all plant, materials, equipment, tools, supplies and job site records, and shall cooperate fully with Fairfax Water by providing Fairfax Water with any keys or access devices used to gain entry to the Site.

C. Completion of Work after Declaration of Default:

1. Following receipt by the Contractor of a Declaration of Default, Fairfax Water may proceed to have the Work completed or the defective equipment or machinery replaced, or anything else done to complete the Work in accordance with the Contract Documents by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose, without additional cost to Fairfax Water, such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Site, and also such subcontractors as it may deem advisable and may take any or all of the following actions:
  - a. delete part or parts of the Work from the Contract and contract to have it performed by others;
  - b. supplement the Contractor's work force;
  - c. withhold payments due the Contractor and use such payments to satisfy any claims for monies owed by the Contractor in connection with the Project, in accordance with paragraph 10.C.2;
  - d. replace or repair any defective Work, machinery or equipment;
  - e. terminate the Contractor pursuant to Item 9.F.1.h.
2. The Contractor and his Surety shall bear all costs associated with completing or correcting the Work, including without limitation, the cost of re-letting, the amount of any liquidated damages, and any and all costs incurred in connection with the actions listed in this paragraph.
3. Any costs incurred in connection with completing or correcting the Work will be deducted from the amounts then or thereafter due the Contractor. In the event such amounts are not sufficient to cover the costs incurred in connection with completing or correcting the Work, the Contractor and his Surety shall pay to Fairfax Water the amount of any deficiency.

4. In the event the Contractor or the Surety fails to pay Fairfax Water the costs specified in this Article, the Contractor and the Surety shall be jointly and severally liable for all costs, expenses and attorney fees incurred by Fairfax Water in collecting the amounts due.
  5. In the event of termination for default, Fairfax Water may direct that the Contractor, or one or more of its Subcontractors, or both, be barred from the Project Site and not be permitted to perform further Work. In fulfilling its obligations under the Performance Bond, the Surety shall accept and abide by such direction without additional cost to Fairfax Water.
- D. Partial Default: In the event Fairfax Water declares the Contractor in default with respect to a part of the Work in accordance with the provisions of paragraph 9.A hereof, the Contractor shall discontinue such part of the Work declared in default, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract, and shall not hinder or interfere with any other contractor or persons whom Fairfax Water may engage to complete the Work for which the Contractor was declared in default. The expense of such completion shall be paid by the Contractor and his Surety as hereinbefore stated.
- F. Fairfax Water's Right to Terminate for Cause:
1. In the event:
    - a. the Contractor is adjudicated bankrupt or makes a general assignment for the benefit of its creditors; or
    - b. a receiver or trustee is appointed for the Contractor or the Contractor's property; or
    - c. the Contract or any part hereof is assigned, in whole or in part, without the prior written consent of Fairfax Water; or
    - d. this Contract or any rights, monies, or claims hereunder are assigned in whole or in part by the Contractor, otherwise than as herein specified; or
    - e. the Work to be performed under this Contract is abandoned;
    - f. Fairfax Water has issued a Declaration of Default to the Contractor in accordance with paragraph 9.B.;then Fairfax Water, without prejudice to any other rights or remedies of Fairfax Water, will have the right to terminate the Contractor for cause effective immediately upon issuance of a Notice of termination to the Contractor.
  2. If, after issuance of a Notice of termination of the Contract under the provisions of Section 9.F.1., it is judicially determined that the Contractor was not in default under the provisions of paragraph 9.A.1.a through 9.A.1.g, or that cause for such termination otherwise did not exist under the provisions of paragraph 9.F.1.a through 9.F.1.f, then the termination shall be deemed to be a termination for convenience of Fairfax Water and the rights and obligations of the parties shall be the same as if the Notice of termination had been delivered under the provisions of Section 9.G hereof; provided, however, that the Contractor in such event shall be deemed to have received seven Days prior Notice of termination. Any compensation then or thereafter payable to the Contractor under Section 9.G shall be offset by the cost of remedying any defective Work by the Contractor. In no event shall the Contractor be entitled to recover consequential damages of any kind in connection with any termination under Article 9.

3. Fairfax Water's right to terminate this Contract for cause is in addition to and without prejudice to any other right or remedy of Fairfax Water. Any actions by Fairfax Water permitted herein shall not be deemed a waiver of any other right or remedy of Fairfax Water under the Contract or under the law. Fairfax Water may offset any claims it may have against the Contractor against the amounts due to the Contractor.
  4. Following a termination for cause hereunder, the Owner and Surety shall proceed as set forth in the Performance Bond. If the expense of finishing the Work exceeds the unpaid balance of the Contract Sum and all amounts due under the Performance Bond, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.
- G. Fairfax Water's Right to Terminate for Convenience: Fairfax Water will have the right to terminate this Contract, in whole or in part, at any time without cause by giving seven Days prior notice of termination to the Contractor. Upon Notice of termination for convenience, the Contractor shall immediately cease Work and remove from the Site all of its labor forces, equipment and such of its materials as Fairfax Water elects not to purchase or to assume in the manner hereinafter provided. The Contractor also shall take such steps as Fairfax Water may require to assign to Fairfax Water the Contractor's interest in all Subcontracts and purchase orders designated by Owner. After all such steps have been taken to Owner's satisfaction, the Contractor shall receive as full compensation hereunder an amount equal to the lesser of:
- (1) the actual cost of any Work, labor or materials actually performed and in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof; or
  - (2) the pro rata percentage of completion based upon the most recent approved schedule of values furnished by the Contractor, plus the actual cost of any labor, equipment, or materials ordered in good faith which could not be canceled, less the salvage value thereof.

Each subcontract shall contain a similar termination provision for the benefit of the Contractor and Fairfax Water. The Contractor agrees neither it nor its Subcontractors shall be entitled to any additional compensation, including but not limited to loss of revenue, income, profit, business, reputation, or bonding capacity, consequential damages or lost profits, but shall only receive payment upon termination for convenience as stated in this paragraph 9.G. Fairfax Water may offset any claims it may have against the Contractor against the amounts due to the Contractor. Upon payment of the amounts stated in this Paragraph 9.G, Owner shall have no further obligations to the Contractor of any nature. Fairfax Water (or its Authorized Representative) will have the right to verify any amounts claimed by the Contractor to be due under this Section. The Contractor shall grant Fairfax Water (or its Authorized Representative) access, during normal business hours, to its books, records and contracts, insofar as they pertain to amounts claimed to be due hereunder.

## ARTICLE 10 - PAYMENT

- A. Prices:
1. For the Contractor's complete performance of the Work, Fairfax Water agrees to pay, and the Contractor agrees to accept, subject to the terms and conditions hereof, the lump sum prices and/or unit prices in the Contractor's Bid and the award made thereon, taking into consideration the actual quantities required with respect to unit price items, any deductions based on award of a combination of Divisions, if applicable, plus the amount required to be paid for Extra Work ordered under Section 7.B hereof, less credit for any Work omitted pursuant to Section 7.C hereof.

2. Under unit price items, the number of units actually required to complete the Work under the Contract may be less or more than stated in the Bid. The Contractor agrees that no claim will be made for any damages or for loss of profits or Overhead because of a difference between the quantities of the various classes of Work assumed and stated in the Bid as a basis for comparing Bids and the quantities of Work actually performed.
  3. The amount awarded as a unit price for any unit price Contract Item shall represent payment in full for all the material, equipment and labor necessary to complete, in conformity with the Contract Documents, each unit or item of Work shown, specified, or required under the unit price Contract Item.
  4. The sum awarded for any lump sum Contract or lump sum Contract Item shall represent payment in full for all Work, including material, equipment and labor necessary or required to complete, in conformity with the Contract Documents, the entire Work shown, indicated or specified under the lump sum Contract Item.
  5. No payment other than the amount awarded will be made for any class of Work included in a lump sum Contract Item or a unit price Contract Item, unless specific provision is made therefor in the Contract Documents.
- B. Submission of Schedule of Values: Within 20 Days after the execution of this Contract, the Contractor shall submit to the Engineer a breakdown of the lump sums and unit prices proposed for Contract Items, indicating the various operations to be performed under the Contract and the value of each of such operations, with the total of such items to equal the Contract Sum. The Contractor also shall submit such other information relating to the bid prices and shall revise the schedule of values to a form acceptable to the Engineer. Following acceptance of the schedule of values, it may be used for checking the Contractor's applications for partial payments hereunder but shall not be binding upon Fairfax Water or the Engineer for any purpose whatsoever.
- C. Partial Payments:
1. On or about the first of each month, the Contractor shall make and certify an estimate of the amount and the fair value of the Work performed and may apply for partial payment therefor. The Contractor shall include its federal employer identification number on each such application for payment. The Engineer may, in his discretion, revise the estimate to show the actual value of Work completed in accordance with the Engineer's observation of the Work. The Contractor agrees to be bound by Engineer's revisions to his applications for partial payment. Whenever the monthly estimate, after approval by the Engineer, shows that the value of the Work completed during the previous month exceeds \$1,000, Fairfax Water will issue a certificate for such Work. Such certificate will authorize payment by Fairfax Water in an amount equal to the value of the Work completed less any sums retained or deducted by Fairfax Water under the terms of the Contract Documents, and less retainage of 5 percent of payments claimed. Fairfax Water may, in its own discretion, reduce the amount of retainage withheld, in the latter stages of the Project.
  2. Fairfax Water may withhold payment to such extent as may be necessary in the opinion of the Engineer and Fairfax Water to protect Fairfax Water due to loss because of:
    - a. defective Work not remedied,
    - b. third party claims filed or reasonable evidence indicating probable filing of such claims,
    - c. failure of the Contractor to make payments properly to subcontractors or for labor, materials or equipment,

- d. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
  - e. damage to the Owner or another caused by the negligent or wrongful act or omission of the Contractor or any Subcontractor,
  - f. reasonable evidence that the Work will not be completed within the time for completion,
  - g. failure to carry out the Work in accordance with, or to otherwise observe the requirements of, the Contract Documents, or
  - h. liability, damage, or loss due to injury to persons or damages to the Work or property of other Contractors, subcontractors of others, caused by the negligent or wrongful act or omission of the Contractor of any Subcontractor.
3. No partial payment will be made for any materials or equipment supplied hereunder before they are incorporated in the Work in a permanent manner required by the Contract Documents, unless otherwise specified herein.
  4. The cost of equipment and nonperishables delivered and stored at the Site of the Project and tested for adequacy may be included in the Contractor's application for partial payment; provided, however, that the Contractor shall furnish written evidence satisfactory to Fairfax Water that the Contractor is the owner of such materials or equipment at the time of payment therefor by Fairfax Water and that such equipment is being stored and maintained in accordance with the Contract Documents and the manufacturer's recommendations. The amount to be paid will be 95 percent of the invoice cost as set forth on the original invoice from the supplier or manufacturer. Such payment shall not relieve the Contractor of full responsibility for completion of the Work and for protection of materials and equipment until incorporated in the Work in a permanent manner as required by the Contract Documents.
  5. Before any payment will be made under this Contract, the Contractor and every Subcontractor, if required, shall deliver to the Engineer a written, verified statement, in satisfactory form, showing in detail all amounts then due and unpaid by the Contractor and Subcontractor to all laborers, workmen, and mechanics, employed under the Contract for the performance of the Work at the Site of the Project, for daily or weekly wages, or to other persons for materials, equipment, or supplies delivered at the Site of the Project during the period covered by the payment request.
  6. Upon the request of Fairfax Water, as a prerequisite for payment pursuant to the terms of this Contract, the Contractor shall give Fairfax Water a statement that no employee of Fairfax Water, has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee, or other remuneration of any sort arising from or directly or indirectly related to this Contract. Fairfax Water will have the right, in its sole discretion, to withhold payment to the extent of any such fee, commission, or the like. The Contractor shall not be entitled to interest and shall not have any claim against Fairfax Water on account of any payments being withheld under this paragraph 10.C.6.
  7. In addition to any other remedy provided by the Contract Documents, Fairfax Water may withhold from the Contractor as much of any approved payments to him as may in the opinion of Fairfax Water be necessary to secure: (a) just claims of any persons supplying labor or materials to the Contractor or any of his Subcontractors for the Work then due and unpaid; (b) loss due to defective Work not remedied; or (c) liability, damage, or loss due to injury to persons or damages to the Work or property of other contractors, subcontractors

or others, caused by the act or neglect of the Contractor or any of his Subcontractors. Fairfax Water will have the right, as authorized representative for the Contractor, to apply any such amounts so withheld in such manner as Fairfax Water may deem proper to satisfy such claims, correct such defective Work, or to secure such protection. The application of these amounts shall be deemed payments for the account of the Contractor and will reduce Fairfax Water's indebtedness to the Contractor accordingly.

8. Fairfax Water may, at any time **during the Contract Period and to include any warranty period thereafter**, issue notice to the Contractor setting forth: (a) Fairfax Water's determination that: (i) the classification, amount, quality, or character of the Work performed by or on behalf of the Contractor shall have been incorrect in any respect; (ii) any decision, acceptance, certificate or payment issued in connection with the Work shall have been incorrect or shall have been improperly made in any respect; and/or (iii) the Work or any part thereof does not in fact conform to the requirements of the Contract Documents; and (b) the amount of any overpayment made by Fairfax Water to the Contractor in connection therewith. The amount of such overpayment shall be deducted by Fairfax Water from amounts then or thereafter due the Contractor or, upon direction of Fairfax Water as set forth in the notice, shall be paid by the Contractor and/or the Surety to Fairfax Water within 15 Days after the receipt of such notice. Any such overpayment which is not paid when due shall accrue interest at a rate of one percent per month until paid in full.

D. Final Payment:

1. Upon determination of Final Completion of the Work, the Contractor shall prepare and submit to Fairfax Water his final payment request.
2. The final payment request shall state that the Work has been completed and set forth the amount of any final payment remaining due to the Contractor. Upon Fairfax Water's acceptance that the Work is fully completed, Fairfax Water will, within 30 Days after the Final Completion date (as determined in accordance with the Contract Documents), pay the Contractor the entire amount found due thereunder, after deduction of all previous payments and all percentages and amounts to be kept and retained under provisions of this Contract. All prior partial payments, being merely estimates made to enable the Contractor to prosecute the Work more advantageously, shall be subject to correction in the final estimate and payment. The Contractor understands that, before receiving final payment, he shall submit to Fairfax Water: (a) sworn payment affidavit and release in the form attached to these General Conditions certifying that all bills for labor, materials, services and benefits provided by or through the Contractor in connection with the Work performed pursuant to the Contract Documents have been paid and that there are no claims pending or threatened in connection with the Work done or labor and materials furnished under the Contract, and releasing Fairfax Water from any and all claims arising from or in connection with the Work performed pursuant to the Contract Documents; and (b) a consent of Surety to final payment in the form attached to these General Conditions. In the event that one or more suits or causes of action is or are pending in connection with the Work, Fairfax Water, in its sole discretion, may permit the Contractor to execute a separate Surety bond in a form satisfactory to Fairfax Water, or to submit an executed consent of the Surety in a form satisfactory to Fairfax Water. Any such Surety bond shall be in an amount equal to the aggregate amount of all such suits and causes of action.

- E. Neither the final payment nor any part of the retained percentage will be paid until the Contractor, if required, furnishes Fairfax Water with a complete release and indemnity from any third-party claims which might arise out of this Contract. If a third-party claim remains unsatisfied after all payments are made, the Contractor or his Surety shall refund to Fairfax Water all monies which

Fairfax Water may be compelled to pay in discharging such claim, including incidental costs and attorneys' fees.

- F. **Acceptance of Final Payment:** The acceptance by the Contractor, or by anyone claiming by or through him, of the final payment shall be deemed to constitute a release to Fairfax Water and every officer and Authorized Representative thereof from any and all claims, disputes and liabilities to the Contractor for anything done or furnished in connection with the Work or the Project. However, no payment, final or otherwise, no certificate of completion, nor partial or entire use or occupancy of the Work by Fairfax Water, shall be deemed to constitute an acceptance of any Work or materials not in accordance with the Contract, nor relieve the Contractor of responsibility for nonconforming materials or Defective Work, or operate to release the Contractor or its Surety from any obligation under the Contract, the Performance Bond, or the Payment Bond.
- G. **Payments to Subcontractors:**
1. The Contractor will be liable for the entire amount owed to any Subcontractor with which it contracts, provided that the Contractor will not be liable for amounts otherwise reducible due to the Subcontractor's noncompliance with the terms of its contract. However, in the event that the Contractor withholds all or a part of the amount promised to the Subcontractor under the contract, the Contractor must notify the Subcontractor, in writing, of its intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment. Payment by Fairfax Water to the Contractor will not be a condition precedent to payment to any lower-tier Subcontractor. Any provision in the Contract Documents contrary to this paragraph will be unenforceable.
  2. Within seven Days after receipt of each payment from Fairfax Water, the Contractor shall:
    - a. Pay each Subcontractor an amount equal to the proportionate share of the total payment received from Fairfax Water attributable to Work performed by such Subcontractor (giving effect to the percentage of payments to be retained by Fairfax Water from amounts due the Contractor); or
    - b. Notify Fairfax Water, the Engineer and the Subcontractor in writing of the Contractor's intention to withhold all or part of the amounts due the Subcontractor pursuant to paragraph 10.G.2.a above, and state the reason for such withholding.
  2. Each subcontract entered into by the Contractor in connection with the Work shall: (a) obligate the Subcontractor to include its social security number or federal employer identification number, as the case may be, on all applications for payment; and (b) obligate each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor as are required of the Contractor hereunder.
  3. The Contractor shall pay interest on amounts owed to the Subcontractor which remain unpaid seven Days after the Contractor's receipt of payment from Fairfax Water, provided, however, that amounts owed the Subcontractor which have been withheld properly, pursuant to Paragraph 10.G.2.b, shall not accrue interest. Interest on amounts due the Subcontractor and unpaid shall accrue at the rate of one percent per month; provided, however, that the Contractor's obligation to pay interest hereunder shall in no event be construed to be an obligation of Fairfax Water. 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 such interest charge.
- H. **Payment Terms:** Fairfax Water shall pay the Contractor amounts due within 45 Days of approval hereunder. Past due amounts shall accrue interest at the rate of one percent per month.

## ARTICLE 11 - INSURANCE

### A. Contractor's Insurance:

1. During the term of this Contract, the Contractor shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Fairfax Water, the following types of insurance:
  - a. Commercial General Liability and Property Damage Insurance covering claims for damages, for bodily injury, including accidental death, personal injury, products and completed operations, as well as claims for property damage which may arise from operations under the Contract, whether such operations be performed by the Contractor or by any Subcontractor, or by anyone directly or indirectly employed by either of them. Such insurance includes coverages "X", "C" and "U" for explosion, collapse of other structures and underground utilities, and Contractual Liability Insurance covering the requirements outlined in the General Conditions. This insurance shall name Fairfax Water and the Engineer as additional insureds and shall protect Fairfax Water and the Engineer against similar claims. If endorsements to the Commercial General Liability insurance policies cannot be made, then separate policies providing such protection shall be purchased by the Contractor. Policy shall be subject to a \$2,000,000 combined single limit per person/occurrence for bodily injury, property damage, and personal and advertising injury and 3,000,000 annual aggregates. This insurance shall include coverage for all the following:
    1. General aggregate limit applying on a per project basis.
    2. Liability arising from premises and operation.
    3. Liability arising from the actions of independent contractors.
    4. Liability arising from products and completed operations with such coverage to be maintained for two years after completion of the Work.
    5. Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract; and
    6. Liability arising from the explosion, collapse, or underground (XCU) hazards.
  - b. Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
  - c. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. Fairfax Water should be added as a "loss payee."
  - d. Cyber Security / Data Breach Insurance – (For any service offering hosted by the Contractor) ten million dollars (\$10,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the Fairfax Water's claimants or employers is processed or stored.
  - e. Worker's Compensation and Employer's Liability Insurance for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of

the Commonwealth of Virginia. The Contractor shall require each of his Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged on work under the Contract is not protected under the Worker's Compensation statute, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the Contractor and each of his Subcontractors shall be not less than \$100,000 per employee for Bodily Injury. The Worker's Compensation and Employer's Liability Insurance policy shall include an "all states" or "other states" endorsement.

- f. Commercial Automobile Liability Insurance, (including owned, hired, and non-owned vehicles) including employee's ownership liability and hired automobile insurance with liability, collision, and PIP limit of, \$1,000,000 combined single limit.
  
- g. All Risk Insurance covering damage, loss, or injury to the Work. The policy shall name Fairfax Water as an "additional insured" and "loss payee." If permitted by the insurer, the policy will be payable to Fairfax Water, and the proceeds thereof, when paid, will be retained by Fairfax Water as security for the performance by the Contractor of his obligations under the terms and conditions of this Contract and, upon such performance, will be released to the Contractor. If the foregoing is not permitted by the insurer, the proceeds of any claim shall be issued by the insurer by check made payable jointly to the Contractor and Fairfax Water. The policy shall be in an amount equal to the Contract Sum and shall apply to all Projects under construction by the Contractor on behalf of Fairfax Water during the term of this Contract.
  
- h. Contractor's Pollution Liability Insurance covering bodily injury and property damage which may arise from operations under the Contract, whether such operations be performed by the Contractor or by any Subcontractor, or by anyone directly or indirectly employed by either of them. This insurance shall name Fairfax Water and the Engineer as additional insureds and shall protect Fairfax Water and the Engineer against similar claims. Policy shall be subject to a minimum \$5,000,000 combined single limit per person/occurrence. Policy must be written on an occurrence form, and will remain in effect until Acceptance, and ensure that completed operations coverage is provided for a period of no less than two years after Acceptance. This insurance shall include coverage for all the following:
  - 1. Bodily injury and property damage to third parties.
  - 2. Natural resource damages.
  - 3. Environmental cleanup including restoration or replacement costs.
  - 4. Legal defense.

5. Transportation of waste material by or on behalf of the Contractor away from the Project Limits.
6. Disposal liability for pollution conditions on, at, under, or emanating from any disposal site, location or facility used by or on behalf of the Contractor for disposal of waste.
7. Waiver of Subrogation for all claims and suits, including recovery of any applicable deductibles; and
8. Severability of Interest/Separation of Insureds.

This insurance shall not contain any exclusions or limitations for:

1. Liabilities assumed under an insured contract.
2. Lead, silica, or asbestos; and
3. Leaking petroleum storage tanks.

Contractor shall submit documentation from the insurance company indicating the coverage, limitation of coverage, term of coverage, naming Fairfax Water and the Engineer as additional insured on the policy.

2. The Contractor shall require each of his Subcontractors to procure and maintain during the term of his subcontract, insurance of the type specified in paragraph 11.A.1.a, in amounts satisfactory to the Contractor.
3. Proof of insurance for each type of coverage listed herein shall be provided within 10 Days after issuance of the Award Letter for the Contract, and no Work shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence work under a subcontract until all such insurance of the Subcontractor has been so obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein. The Contractor certifies by commencement of the Work that his insurance and that of Subcontractors is in effect and meets the requirements set forth herein.
4. The Contractor shall purchase and maintain required liability and all other insurance as is appropriate for the Work being performed and furnished. The insurance shall provide protection from claims set forth herein which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:
  - a. claims under worker's compensation, disability benefits, and other similar employee benefit acts.
  - b. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees.
  - c. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
  - d. claims for damages insured by personal injury liability coverage which are sustained: (1) by any person because of an offense directly or indirectly related to the employment of such person by Contractor; or (2) by any other person for any other reason.
  - e. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

- f. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.
  5. The insurance required to be purchased and maintained by the Contractor shall:
    - a. include completed operations insurance.
    - b. with respect to completed operations insurance and any other insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Contractor shall furnish Fairfax Water and Engineer evidence satisfactory to Fairfax Water of continuation of such insurance at final payment and one year thereafter).
    - c. contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance.
  6. Each of the foregoing insurance policies must be endorsed to provide that the insurance company shall give 30 Days' written notice to Fairfax Water if the policies are to be terminated or if any changes are made during the Contract Period which will affect in any way the insurance requirements set forth herein. Before commencing the Work, the Contractor shall provide Fairfax Water with a copy of each policy which he and each of his Subcontractors shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment.
  7. If at any time Fairfax Water becomes dissatisfied with any insurance company which provides required insurance coverage on behalf of the Contractor, or if for any other reason such required insurance coverage shall cease to provide adequate protection to Fairfax Water, as determined by Fairfax Water in its sole discretion, then the Contractor shall, within 10 Days after receipt of written notice from Fairfax Water, substitute one or more acceptable insurance companies and or insurance policies as may be satisfactory to Fairfax Water. The premiums on such insurance shall be paid by the Contractor and shall be included in the Contract Sum. No further partial payments shall be deemed due or be made until the new insurance coverage shall have become effective.
- B. Nothing contained herein shall effect, or shall be deemed to effect, a waiver of Fairfax Water's sovereign immunity under law.

## **ARTICLE 12 – CONTRACT SECURITY**

- A. Contract Security:
1. The Contractor shall execute and deliver to Fairfax Water Performance and Payment Bonds on the forms provided herein, each in an amount equal to the Contract Sum, and each accompanied by an appropriate Power of Attorney evidencing the authority of the Surety's representative to execute such Bond on behalf of the Surety. Each Performance and Payment Bond shall be issued by a solvent and responsible surety company that is authorized to conduct business in the Commonwealth of Virginia, named in the U.S. Treasury Department's current list of companies certified to write bonds for the federal government, and acceptable to Fairfax Water. The Performance and Payment Bonds shall serve as security for the faithful performance of this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection with this Contract. The premiums on the Performance and Payment Bonds shall be paid by the Contractor and shall be deemed to be included in the Contract Sum.
  2. If at any time Fairfax Water becomes dissatisfied with any Surety or Sureties upon the Performance and Payment Bonds, or if for any other reason such bond shall cease to be adequate security for Fairfax Water, as determined by Fairfax Water in its sole discretion, the Contractor shall within five days after notification, substitute acceptable bonds in such form and sum and signed by such other sureties as may be satisfactory to Fairfax Water.

The premiums on such Bonds shall be paid by the Contractor and shall be included in the Contract Sum. No further partial payments shall be deemed due or be made until the new sureties have qualified.

3. Notwithstanding any provisions in these Contract Documents to the contrary, the Contractor may furnish Fairfax Water with a certified check, cashier's check, or cash escrow in the amount of the Contract Sum in lieu of the payment bond, the performance bond, or both.

B. No Liens:

The Contractor shall keep Fairfax Water's property free and clear from all liens. The Contractor shall, upon Notice from Fairfax Water, cause any liens filed or recorded to be released within 10 Days from Notice at its cost and expense; and if the Contractor fails to do so, Fairfax Water shall have the right, but not the obligation, to cause such lien to be released by bonding or otherwise, and the Contractor shall indemnify and hold harmless Fairfax Water from all costs and expenses incurred or to be incurred as a result, including bond premiums, court costs and attorneys' fees arising from or related to such liens. At Fairfax Water's option, it may withhold payment of any sums due to the Contractor until any such liens are released, and may deduct such costs or expenses from any payment then due or thereafter becoming due from Fairfax Water to the Contractor.

## **ARTICLE 13 - SUBCONTRACTS AND ASSIGNMENTS**

A. Limitations and Consent:

1. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract or of his right, title, or interest therein, in whole or in part, or any claim allegedly arising herefrom and shall not assign any monies due or to become due hereunder to any other person, firm or corporation without first obtaining the written consent of Fairfax Water. Fairfax Water's consent to a particular subcontract or assignment will not constitute a waiver of Fairfax Water's right to consent to any further or other subcontracts or assignments.
2. Where the Specifications establish qualifications and/or criteria for any one or more Subcontractors performing Work on the Project, the Contractor shall, as soon as practicable after receipt of Notice of Award, provide Fairfax Water and the Engineer with a listing setting forth the name and address of each such Subcontractor proposed, indicating with respect to each the trade, supplies, or other aspect of the Work the proposed Subcontractor will perform or provide. For each proposed Subcontractor, the Contractor shall include an OSHA Form 300 (a list of citations for safety violations) and a completed "Subcontractor Qualification Form" in the form attached to these General Conditions, all intended to demonstrate to Fairfax Water that the proposed Subcontractor satisfies all qualifications and/or criteria set forth in the Specifications and otherwise has the necessary facilities, skill, integrity, safety record, past experience and financial resources to perform the Work in accordance with the terms and conditions of this Contract. Unless additional or trade-specific subcontractor qualifications are required in the Contract Documents, the Contractor must, at a minimum, demonstrate to the satisfaction of Fairfax Water that the proposed Subcontractor has successfully performed similar work on a project which is similar in size, scope, and nature to the Project. The Engineer shall advise Fairfax Water of its opinion and recommendation with regard to each proposed Subcontractor. The Contractor has the burden of demonstrating that each proposed Subcontractor fully satisfies the requirements outlined above and shall not engage any Subcontractor that Fairfax Water may, within a reasonable time, object to as unsuitable.

3. If Fairfax Water finds in its sole discretion that a proposed Subcontractor satisfies the applicable requirements, then Fairfax Water will notify the Contractor in writing within 20 Days after Fairfax Water's receipt of all required information. Fairfax Water may retract its acceptance of any Subcontractor in the event such Subcontractor evidences an unwillingness or inability to perform his work in strict accordance with these Contract Documents. Notice of such retraction will be given in writing to the Contractor. Upon receipt of notification of such retraction, the Contractor shall, within 10 Days, address all reasons stated in the retraction and furnish satisfactory evidence that immediate steps are being undertaken by the Subcontractor to correct any unwillingness or inability to perform which would have caused such retraction, or, submit a new Subcontractor for Fairfax Water's review at no additional cost.
  4. Where the Specifications require the use of a specific manufacturer, supplier or installer, either by name or by identifying characteristic (by use of such term as "manufacturer-certified" or the like), the Contractor shall perform the designated portion of the Work through the specified entity, and no claim may be made for an increase in the Contract Sum, or for an extension of the Contract Period on the ground that the Contractor's Bid included performance by another means or entity, or that the Contractor otherwise intended or applied to accomplish performance in another fashion. Nothing herein shall preclude Fairfax Water in its sole discretion from consenting to a substitute manufacturer, supplier or installer and, in such event, Fairfax Water's consent shall be in writing.
  5. Upon request, the Contractor shall promptly file with Fairfax Water a conformed copy of any subcontract. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind Subcontractors to the Contractor in accordance with the terms of these Contract Documents, insofar as applicable to the work of Subcontractors, and to give the Contractor the same power to terminate any subcontract that Fairfax Water may exercise over the Contractor under provisions of these Contract Documents.
- B. Responsibility: Fairfax Water's review or acceptance of Subcontractors in connection with this Project shall not relieve the Contractor of any of his responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to Fairfax Water for the acts, defaults, and omissions of its agents and employees, and of all tiers of Subcontractors and Subcontractors' officers, authorized representatives and employees. Nothing contained in the Contract Documents shall be construed to create any contractual relationship between any Subcontractor and Fairfax Water or the Engineer.

#### **ARTICLE 14 - INDEMNIFICATION**

- A. Suits at Law: The Contractor hereby assumes all liability for and will indemnify and hold harmless Fairfax Water and the Engineer and its or their officers, Members, Authorized Representatives and employees (any one of which is an "Indemnified Party") against any and all claims, causes of action, losses, costs, damages, penalties, liabilities, and fees (including reasonable attorneys' fees) and expenses of any kind or nature whatsoever, resulting from or relating to: (i) any material breach of the representations, warranties, agreements, and covenants of the Contractor contained in the Contract Documents; (ii) any injuries to persons (including sickness, disease, or death) or damage to property caused by the negligent or wrongful act or omission or alleged negligent or wrongful act or omission of the Contractor or his Subcontractors, employees, or authorized representatives; (iii) any claims filed by the Contractor which are adjudicated in favor of Fairfax Water; or (iv) any claims or losses in any other manner arising out of the performance of this Contract.
- B. In the event that a claim is brought against an Indemnified Party by: (a) the Contractor or an employee of the Contractor; (b) any Subcontractor or supplier or any employee thereof; (c) any person or entity engaged by or through the Contractor or any Subcontractor or supplier to furnish

or perform any portion of the Work; or (d) any person or entity for whom the Contractor or any Subcontractor or supplier may be vicariously liable, the indemnification obligations set forth in Paragraph 14.A. shall not be limited in any respect by any limitation on the type or amount of damages, compensation, benefits or other remuneration payable by or for the Contractor or any Subcontractor, supplier or other such person or entity under any laws, rules, regulations or plans of any nature governing workers' compensation, disability benefits or other employee benefits.

- C. Claims on Behalf of Subcontractors: The Contractor shall not present any claim to Fairfax Water by or on behalf of a Subcontractor unless the Contractor first shall have evaluated such claim thoroughly and determined it to be meritorious. When presenting a claim to Fairfax Water by or on behalf of a Subcontractor, the Contractor shall provide a reasonably detailed summary of the claim and an evaluation of the merits, together with a recommendation regarding any additional compensation or time to be granted on account of such claim and related documentation.
- D. Liability Unaffected: Nothing herein contained shall in any manner create any liability against Fairfax Water on account of any claim for labor, services, or materials, or of subcontractors, and nothing herein contained shall affect the liability of the Contractor or his Sureties to Fairfax Water or to any workmen or materialmen upon bonds given in connection with this Contract. The Contractor hereby acknowledges and agrees that, as between Fairfax Water and the Contractor, the Contractor shall bear full and complete responsibility for the performance of its Subcontractors, manufacturers and suppliers, regardless of whether any such Subcontractor, manufacturer or supplier was designated as "preapproved" by Fairfax Water.

## **ARTICLE 15 - POWERS OF FAIRFAX WATER'S REPRESENTATIVES**

### **A. The Engineer:**

- 1. The Engineer, in addition to those matters elsewhere herein expressly made subject to his determination, or approval, will have the power, subject to Fairfax Water's review.
  - a. To review all submittals and provide technical assistance to the Owner during construction.
  - b. To make visits to the Site at intervals appropriate to the various stages of construction to observe the progress and quality of the finished Work and to determine in general if the Work is proceeding in accordance with the Contract Documents.
  - c. To issue with reasonable promptness such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as the Engineer may determine necessary; provided that such clarifications or interpretations will be consistent with or reasonably inferable from the overall intent of the Contract Documents.
  - d. To disapprove or reject such Work as he believes to be defective, and also to require special inspections or testing of the Work, whether or not the Work is fabricated, installed or completed.
  - e. To designate a Project Representative to assist Fairfax Water's Authorized Representative in observing performance of the Work.
  - f. To be an interpreter of the requirements of the Contract Documents and to judge the acceptability of the Work performed thereunder.

2. The power of the Engineer will not be limited to the foregoing enumerations. It is the intent of this Contract that all of the Work will be subject to the Engineer's review and acceptance, except where the reviews or approval of someone other than the Engineer is expressly called for herein and except where subject to review by Fairfax Water's Authorized Representative.
  3. Neither the Engineer's authority to act hereunder nor any decision made by him in good faith to exercise or not to exercise such authority will give rise to any duty or responsibility of the Engineer to the Contractor, or to any Subcontractor, any materialman, fabricator, supplier or any of their authorized representatives or employees or any other person or entity performing any of the Work.
  4. The Engineer will not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of his or their representatives or employees or any other persons at the Site or otherwise performing the Work.
  5. The Engineer will not be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto. Furthermore, the Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.
  6. Any requirement, direction, review, or judgment given by the Engineer is intended solely to evaluate the Work in order to determine compliance with the Contract Documents. Nothing contained in the Contract Documents and no act or omission on the part of Fairfax Water, the Engineer or their Authorized Representatives will imply that the Engineer has any authority or responsibility to supervise or direct the means and methods of the performance of the Work.
- B. The General Manager:
1. The General Manager, in addition to those matters expressly made subject to his or her determination, direction or approval, will have the power:
    - a. To decide any and all questions, claims and disputes in relation to this Contract and its performance, except as herein otherwise specifically provided.
    - b. To modify or change this Contract in accordance with Article 7, B.1. so as to require the performance of Extra Work, or the omission of Contract Work or both, whenever he or she deems it in the interest of Fairfax Water to do so.
    - c. To suspend the whole or any part of the Work whenever in the General Manager's judgment, such suspension is required: (1) in the interest of Fairfax Water generally, or (2) to coordinate the work of the various contractors engaged on the Project or (3) to expedite the completion of the Project, even though the completion of this particular Contract be thereby delayed, or (4) due to a delay caused by Fairfax Water, Engineer or its or their Authorized Representatives, without compensation to the Contractor for such suspension except for actual costs of demobilization and remobilization, as noted in the General Requirements and other than extending the time for completion of the Work, as much as it may have been, in the opinion of Fairfax Water, delayed by such a suspension.
    - d. To take over, use, occupy, or operate any part of the completed or partly completed Work if, before the final acceptance of the Work, the General Manager deems such action to be in the best interests of Fairfax Water.

C. Project Documents

1. Access to Documents: Fairfax Water and any of its Authorized Representatives shall have access to all records and documents in the possession, custody, control or ownership of the Contractor relating in any way to the Project (the "Project Documents"). The Project Documents shall include, but not be limited to, the following: bid worksheets, daily reports, invoices, sub-contracts, internal memoranda, notes and other data. Fairfax Water and its Authorized Representatives shall, at any time during the term of this Contract and until the expiration of three years from the date of final payment under this Contract, have the right to examine and copy the Project Documents, and the Contractor hereby covenants to maintain the Project Documents for such time and to deliver the Project Documents to Fairfax Water within seven Days after receipt of its request.

**ARTICLE 16 - BOUNDARIES**

- A. Boundaries: The Contractor shall confine his equipment, apparatus, storage of materials, supplies and the apparatus of his workmen, and of his Subcontractors, to the Project boundaries indicated by applicable laws, ordinances, and permits or by direction of Fairfax Water, unless otherwise agreed to in writing.

**ARTICLE 17 - WARRANTIES**

A. Warranties

1. During the Warranty Period (as defined below), the Contractor warrants to the Owner as follows (collectively, the "Warranties"): (a) all Work, materials, equipment, and workmanship shall conform strictly to the requirements of the Contract Documents and are free of defects, imperfections, or non-conformities and shall be suitable for use in accordance with its or their intended purpose or function; (b) materials and equipment furnished under the Contract Documents shall be of good quality and new (unless otherwise specified in the Contract Documents); and (c) the Work will be free of all shrinkage, settlement or other faults of any kind or nature which are attributable to defective workmanship, materials and/or equipment. These Warranties are separate and apart from any manufacturers' warranties.
2. The Warranty Period shall commence on the Date of Final Completion and shall remain in effect for a period of one year, unless a different period of time is specified herein. Equipment and facilities that have seasonal limitations on their operation (e.g. heating or air conditioning units) shall be guaranteed for one (1) full year from the date of the equipment's first seasonally appropriate test and acceptance, in writing, by the Owner. Where the Owner agrees to take occupancy following certification of Beneficial Use of a portion or phase of the Work and before the entire Work achieves Final Completion, the Warranties for that portion or phase shall begin on the date that the Owner takes occupancy, unless otherwise specified in the Contract Documents or by separate agreement.
3. If any of the Work fails to meet the standards set forth in this Article at any time within the applicable Warranty Period, then the Contractor shall correct such Work promptly after receipt of written notice from the Owner. The Contractor promptly shall:
  1. Correct, repair, replace or otherwise place in satisfactory condition all Defective Work, defects, nonconformities, inferior materials, equipment, and/or workmanship;
  2. Make good all damage to the Work or Site or equipment or contents thereof, which, in the opinion of the Owner or the Engineer, is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the requirements of the Contract Documents; and

3. Make good any Work or materials or the equipment and contents of structures and/or Site disturbance that results from fulfilling the requirements of the Warranties.

The Contractor shall correct such Work to meet the standards of this Article, and shall repair (to such standards) any damage to the Project or other property of the Owner caused by the failure of the Work to meet the standards set forth in this Article, even if the performance of such corrective work or repairs extends beyond the applicable warranty period. This obligation shall survive acceptance of the Work by the Owner and termination of the Contract Documents.

3. The Contractor shall provide Fairfax Water with a written extended warranty for any equipment, system, system component, or any other component of the Work that has not been shown to perform to the full satisfaction of the Owner or that has been the subject of repeated service calls or repairs during the applicable Warranty Period. Any such extended warranty shall be for a minimum of one year or such other length of time as deemed acceptable to Fairfax Water.
4. In order to make good the guarantee as herein required, the Contractor shall deposit with the Owner, before Final Payment or release of retainage, a Maintenance Bond issued by a Surety licensed to do business in Virginia and otherwise acceptable to Fairfax Water, for the full and faithful performance of the Warranties. The Maintenance Bond shall be: (a) for a period of time equivalent to the applicable warranty period; (b) in the amount of five percent (5%) of the final Contract Sum; and (c) in substantially the form attached as an exhibit to these General Conditions. Additional maintenance bonds may be required for any equipment, system, system component, or any other component of the Work that are subject to an extended warranty in accordance to Article 17.A.3.
5. Within three Days after receipt by the Contractor of notice specifying a failure of any of the Work to satisfy the Contractor's Warranties, the Owner will consult with the Contractor to determine when and how the Contractor shall remedy such failure; provided, however, that in case of an emergency requiring immediate curative action, the Contractor shall implement such action as it deems necessary and shall notify the Owner of the urgency of an expedited decision by the close of the following business day. The Contractor and the Owner shall agree on such remedy as soon as reasonably practicable. If the Contractor does not use diligent efforts to proceed promptly to effectuate such remedy within the agreed time, or should no such agreement be reached within such three-Day period (or immediately, in the case of emergency conditions), the Owner, after notice to the Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the Contractor. In the event the Owner performs or causes to be performed such corrections and repairs, then the Contractor shall reimburse the Owner for all costs associated therewith within seven Days after written demand from the Owner.
6. The Contractor shall bear all costs of correcting any Work that fails to meet the standards set forth in this Article, including additional testing and inspections, and shall be responsible for all costs associated with the repair of any damage to the Project or to the property of the Owner or of Work performed by Separate Contractors caused by such failure.
7. The Contractor's Warranties shall apply to all corrected and/or repaired Work performed hereunder. The Warranties with respect to such Work shall remain in effect with respect to each corrected and/or repaired element of the Work until the later of: (a) one year after acceptance by the Owner of such corrected and/or repaired Work; or (b) expiration of the applicable Warranty period as set forth in Section A(2) above.
8. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents.

Establishment of the one year Warranty period specified in Section A(2) above relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations under the Contract Documents.

9. All special warranties and guarantees applicable to definite parts of the Work that may be stipulated in or required by the Contract Documents shall be subject to the terms of this Article during the first year of such special warranty or guarantee. The Warranties set forth in this Article shall be in addition to and not in lieu of all other warranties, express or implied, applicable to or arising from this Contract or by law.

## **ARTICLE 18 - APPLICABLE LAW**

- A. **Compliance with Laws:** The Contractor shall comply with all local, state and federal laws, rules, ordinances and regulations applicable to this Contract and to the Work to be performed hereunder, and shall obtain at his own expense all permits, licenses or other authorizations necessary for the prosecution of the Work (except for Virginia Department of Transportation permits, Fairfax County street permits, building permit(s), and easement agreements for the Project) and shall protect and indemnify Fairfax Water and the Engineer and their employees, Members, officers and Authorized Representatives against any claim or liability arising from or based on the violation of any such laws, rules, ordinances and regulations, whether by himself, his employees, or his Subcontractors.
- B. **Legal Provisions Deemed Included:** Each and every provision of any law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party the Contract shall forthwith be physically amended to make such insertion.
- C. **Governing Law and Policy:** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to conflict of law principles.

## **ARTICLE 19 - NON-DISCRIMINATION**

- A. **Employment Discrimination Prohibited:**
  1. During the performance of this Contract, the Contractor agrees as follows:
    - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
    - b. The Contractor will state that it is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor.
    - c. The Contractor accepts that all notices, advertisements and solicitations placed in accordance with federal laws, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The Contractor shall include the provisions of the foregoing paragraphs 1.a, b, and c in every subcontract or purchase order of over \$10,000, in order that the provisions contained therein will be binding upon each such Subcontractor or vendor.
3. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character, or impose conditions that (i) restrict the religious character of the faith-based organizations, except as provided by law, or (ii) impair, diminish or discourage the exercise of religious freedom by the recipients of goods, services or disbursements.

## **ARTICLE 20 - CONTRACTOR'S EMPLOYEES AND DRUG-FREE WORKPLACE**

### **A. Character and Competency:**

1. The Contractor represents that it is a duly organized and licensed entity which employs qualified and experienced personnel who specialize in performing the type of construction services required hereunder. The Contractor agrees to provide a sufficient number of personnel who are suitably qualified and experienced and who are in all respects acceptable to Fairfax Water to perform the Work in an efficient and timely manner. The Contractor represents that it is capable in all respects (including the possession of sufficient financial resources to provide fully for the payment of employees) of performing the Work and agrees to provide construction services of high quality. The Contractor agrees to diligently and conscientiously devote its resources to the performance of the Work. Fairfax Water, upon Notice to the Contractor, and in Fairfax Water's sole discretion, will have the right to direct the Contractor to remove an employee permanently from the site for any reason.
2. All personnel will present a neat appearance and will conduct work in a professional manner with minimum disturbance to Fairfax Water's normal operations. If any of the Contractor's personnel are not satisfactory to Fairfax Water, the Contractor shall replace same with satisfactory personnel. All job-site personnel shall be United States citizens, or aliens properly documented and permitted to work in accordance with federal law and U.S. Immigration and Naturalization Service regulations.
3. Alcoholic beverages, firearms and illegal drugs are prohibited on the Site.

### **B. Superintendence:** The Contractor shall have a competent, experienced, and reliable foreman or superintendent, acceptable to Fairfax Water, who shall serve as the Contractor's authorized representative at the site and shall have authority to act on behalf of the Contractor (the "Superintendent"). The Superintendent shall have full authority to supply material and labor immediately. He shall keep on hand at all times copies of the Contract Documents. Notice or communication to the Superintendent shall be equivalent to notice or communication to the Contractor. The Superintendent shall follow without delay all instructions of Fairfax Water in the prosecution and completion of the Work.

### **C. Payroll Reports:** At the request of Fairfax Water, the Contractor and each Subcontractor shall furnish a duly certified copy of his payroll records as well as any other information required to document the Contractor's compliance with the provisions of the law as to the hours of employment and rates of wages. Neither the Contractor nor his Subcontractors shall include on their payrolls persons not employed by them.

### **D. Contractor's Warranties:** In consideration of and to induce the award of this Contract to him, the Contractor represents and warrants to Fairfax Water as follows:

1. The Contractor is not in arrears to Fairfax County or to Fairfax Water upon any debt or contract, and he is not in default, as surety, contractor, or otherwise;
  2. The Contractor is financially solvent and sufficiently experienced and competent to perform the Work;
  3. The Work can be performed as called for by the Contract Documents;
  4. The facts stated in his Bid and the information given by the Contractor is true and correct in all respects;
  5. The Contractor is fully informed regarding all the conditions affecting the Work to be performed and labor and materials to be furnished for the completion of this Contract; and that his information was secured by personal investigation and research.
- E. Drug-Free Workplace Requirement: During the performance of the Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For purposes hereof, a "drug-free workplace" shall mean the site for the performance of the Work.

#### **ARTICLE 21 – FREIGHT CLAIMS**

- A. Fairfax Water shall not accept responsibility for the processing and/or filing of freight or other shipping claims, and shall not accept any charges relating thereto. Any Commodity that is damaged or lost during shipment shall be replaced promptly by Contractor at no additional cost to Fairfax Water.

#### **ARTICLE 22 – TAX EXEMPTION**

- A. Although Fairfax Water is exempt from, and will not pay any, federal, state or local taxes which may be applicable to the transactions contemplated by these Contract Documents, including without limitation any Federal Excise Tax, Transportation Tax or Virginia Sales and Use Tax, nothing contained herein shall be deemed to confer upon the Contractor any rights to or benefits of tax exempt status under federal or state law. The Contractor shall not claim entitlement to the benefits of tax-exempt status based solely upon its contractual relationship with the Owner.

#### **END OF SECTION 00700 (IFB SECTION 3) - GENERAL CONDITIONS**

## IFB 25-019

### JOB ORDER CONTRACTING (JOC) CONSTRUCTION SERVICES

#### SPECIAL TERMS AND CONDITIONS

#### 4. SPECIAL TERMS AND CONDITIONS

##### 4.1 Incidental Design Services

The Detailed Scopes of Work under this Contract may, on occasion, require the Contractor to provide Incidental Design services. Examples of Incidental Design include abbreviated drawings, sketches, calculations, shop drawings, modified or supplemental Technical Specifications, and as-built drawings. Accordingly, the Contractor shall:

- A. Ensure that any Incidental Designs meet all applicable Local, State and Federal (when applicable) regulations or codes and conform strictly to the guidelines and criteria outlined in the Technical Specifications. In case of uncertainty of detail, procedure or conflict, the Contractor shall request additional instruction from FW. The Contractor is responsible for producing competent, properly coordinated and thorough Incidental Design documents.
- B. Visit all Sites of proposed Work, making the measurements necessary to delineate the extent, character and type of Work required at the Project Sites.
- C. The Contractor shall bear all costs for such development of said Incidental Design documents.

##### 4.2 As-Built Drawings, Shop Drawings and Samples

The Contractor shall review, approve and submit to FW all As-Built Drawings, Shop Drawings, Operations and Maintenance Manuals, Product Data and Samples required by and identified as part of the Detailed Scope of Work for approval. The Work shall be in accordance with approved submittals. All As-Builts and Shop Drawings shall be provided in a media acceptable to FW.

##### 4.3 Details Scope of Work (Including any Drawings) at the Site

The Contractor shall keep at the Site one copy of all Job Orders, Detailed Scopes of Work and associated drawings and applicable Specifications in good order and available to FW at the Site.

##### 4.4 Cleaning Up

The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by his employees or Work. Contractor shall be responsible for the removal of all trash at the end of each day, or more frequently as may be required by the Contract Administrator. At the completion of the Work he shall remove all his rubbish from and about the building and all his tools, scaffolding and surplus materials and shall leave his Work "broom-clean" or its equivalent, unless more exactly specified in the Detailed Scope of Work.

##### 4.5 Use of the Premises

The Contractor shall confine his plant, his apparatus, the staging and storage of materials, the operations of his forces and the Work to limits indicated by law, ordinances, permits or the Contract Documents and shall not unreasonably encumber the premises with his materials. The Contractor

shall not load or permit any part of the Work to be loaded with weight that will endanger its safety. The Contractor shall enforce FW's instructions regarding signs, advertisements, fires and smoking.

#### **4.6 Debris Removal**

- A. Debris, rubbish, hazardous waste and non-usable material resulting from the Work under the Contract, to which FW does not claim a further interest, shall be disposed of off-site by the Contractor.
- B. Non-hazardous waste shall be disposed of at an authorized landfill. The primary waste disposal method to be utilized by the Contractor shall be hauling by truck.
  - 1. The Contractor shall include in his Price Proposal all appropriate waste disposal line items to cover transportation and disposal of said waste at an alternate landfill.
  - 2. In the event that landfill tipping fees cannot be waived, the Contractor shall include in his Price Proposal all appropriate waste disposal line items to cover disposal of said waste.
- C. Hazardous waste shall be disposed of in accordance with all applicable local, state and federal laws and regulations and related manifest documentation provided to FW. The Contractor will dispose of said waste at a properly licensed/regulated landfill or disposal facility. The Contractor shall include in his Price Proposal all appropriate hazardous material disposal line items to cover transportation and disposal of said waste.
- D. At no time shall the contractor utilize FW dumpsters for debris disposal without prior FW approval.
- E. Dumpsters as a means of debris disposal shall only be used by the Contractor with prior written approval of FW. The specific Site location for any dumpster also requires approval by FW prior to placement. If dumpster usage is approved, the Contractor shall include the applicable task from the CTC in its Price Proposal.

#### **4.7 Ingress/Egress, Staging and Site Restoration**

- A. Ingress and egress shall be limited to designated easements of record and/or through written agreements with individual property owners. FW will direct this process and access details will be included in the Detailed Scope of Work associated with each specific Job Order.
- B. The parking and/or staging of Contractor vehicles, equipment, materials, etc., shall be limited to the following:
  - 1. Designated easements of record.
  - 2. Areas secured through written agreements with property owners.
  - 3. Designated parking areas subject to the laws of the City, County and the Commonwealth, as applicable.
- C. The Contractor is expected to display the utmost respect for the citizens of FW and their property during performance of the Work. All properties affected by the Work shall be restored, as nearly as possible, to their original condition unless directed otherwise by FW.

#### **4.8 Contractor and Subcontractor Identification Badges**

All Contractor and Subcontractor employees working at the Site are required to wear a company

supplied photo ID badge. Badges must be clearly visible when worn. The size and content of the badges must be approved by FW at the start of the Contract.

#### **4.9 Criminal Background Checks**

The Contractor shall submit the names, social security numbers, and other information of its employees when requested. This information will only be used by FW to obtain nation-wide criminal background checks when FW, in its sole discretion, determines it necessary for reasons of security or confidentiality. When this occurs, the Contractor shall not send any workers to the job site whose information has not been provided for FW's background check. If the Contractor needs to have materials delivered to the job site, deliveries from outside vendors must be approved in advance by the FW Project Officer. These background checks when requested will be performed at FW's expense.

#### **4.10 FW Right to Stop Work**

If the Contractor fails to correct defective Work as required herein or persistently fails to carry out the Work in accordance with the Contract Documents, FW, by a written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, this right of FW to stop the Work shall not give rise to any duty on the part of FW to exercise this right for the benefit of the Contractor or any other person or entity.

#### **4.11 FW Right to Carry Out Work**

- A. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seven (7) days after receipt of written Notice from FW to commence and continue correction of such default or neglect with diligence and promptness, FW may, without prejudice to any other remedy it may have, rectify such deficiencies as outlined in Section 4.12 Fairfax Water's Right to Perform Work and to Award Separate Contracts. In such case, an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for any Architect/Engineer ("A/E") additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to FW.
- B. Neither FW nor the A/E nor their officers, agents, assigns or employees are in any way liable or accountable to the Contractor or its surety for the method by which work performed by FW, or at FW's direction, or any portion thereof, is accomplished or for price paid therefore. Notwithstanding FW's right to carry out a portion of the Work, maintenance and protection of the Work remains the Contractor's and Surety's responsibility as provided for in the Performance Bond and Guarantee of Contractor.

#### **4.12 FW Right to Perform and Award Separate Contracts**

- A. FW reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site.
- B. When separate contracts are awarded for different portions of the Project or other Work on the site, the term Contractor in the Contract Documents in each case shall mean and Contractor who executes each separate Agreement.

- C. FW reserves the right to perform Work related to any Job Order with its own forces and to award separate contracts in connection with other portions of any Job Order or other Work on the Site under these or similar Conditions of the Contract. The Contractor shall afford other Contractors working on the same Site reasonable opportunity for the introduction and storage of the other Contractor's materials and the execution of the other Contractor's Work. The Contractor shall properly regulate, schedule, connect, and coordinate his Work with any other Contractors on Site.

#### **4.13 Confidentiality**

- A. The Contractor acknowledges and understands that its employees may have access to proprietary, business information, or other confidential information belonging to FW. Therefore, except as required by law, the Contractor agrees that its employees will not.
  - 1. Access or attempt to access data that is unrelated to their job duties or authorizations as related to this Contract.
  - 2. Access or attempt to access information beyond their stated authorization.
  - 3. Disclose to any other person or allow any other person access to any information related to FW or any of its facilities or any other user of this Contract that is proprietary or confidential. Disclosure of information includes, but is not limited to, verbal discussions, FAX transmissions, electronic mail messages, voice mail communication, written documentation, "loaning" computer access codes and/or another transmission or sharing of data.
- B. The Contractor understands that FW, or others may suffer irreparable harm by disclosure of proprietary or confidential information and that FW may seek legal remedies available to it should such disclosure occur. Further, the Contractor understands that violations of this provision may result in termination of the Agreement.
- C. The Contractor understands that information and data obtained during the performance of this agreement shall be considered confidential, during and following the term of this Agreement, and will not be divulged without the Purchasing Agent's written consent and then only in strict accordance with prevailing laws. The Contractor shall hold all information provided by FW as proprietary and confidential and shall make no unauthorized reproduction or distribution of such material.
- D. In addition, FW understands that certain information provided by the Contractor during the performance of this Agreement may also contain confidential or proprietary information. All information will be maintained in accordance with the Virginia Freedom of Information Act.

#### **4.14 Contractor Selection and Award of Individual Contracts; Ordering Procedures**

When more than one Contract is in place, the Contractor with the lowest Contracted Price shall be ordered if its specialized trade skills, evidenced by licenses classified according to 18VAC50-22-20, meet the needs of FW. If the same trade skills of more than one Contractor meet the needs of FW, then the Contractor with the lowest Contracted Price shall be ordered from among the Contractors with same trade skills meeting the needs of FW, until all Contractors are evaluated based on the best interests of FW for ordering. The best interests of FW for ordering shall be at the sole discretion of FW and no minimum Work is guaranteed to any Contractor.

The best interests of FW for ordering may include, but are not limited to, the following considerations at the sole discretion of FW:

- A. Balancing of workload by Job Order dollar volume and Contractor backlogs among Contractors.
- B. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, project cost management, design management requirements and other similar considerations.
- C. Contractor's responsiveness to the Owner on Job Orders.
- D. Management of Job Order dollar volume within bonding limitations of the Contractor.

**END OF SPECIAL TERMS AND CONDITIONS**