

**AGREEMENT FOR SERVICE**

THIS AGREEMENT is effective on the 16th day of November, 2017, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and **SUPERIOR PAVING CORP.** hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

**WITNESSETH:**

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

The Contractor shall provide Cold Mix Asphalt in accordance with the specifications, terms and conditions contained herein.

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

**1.0 SPECIFICATIONS AND RELATED REQUIREMENTS**

**1.1 Specifications**

**A. General Overview of Requirements:**

Fairfax Water maintains a stockpile of Cold Mix Asphalt at each Maintenance Facility to ensure a ready supply for planned and unplanned (emergency) road repairs associated with small water main breaks or transmission line repairs and excavations. Therefore, Contractor is advised this is a **materials only** contract. Fairfax Water will order and pick up Cold Mix Asphalt as requirements become known and by providing the Contractor 2-days advance notice of intended pick up date.

**B. Mandatory Requirements:**

1. All Cold Mix Asphalt supplied to FW shall be manufactured in accordance with the latest version of the Virginia Department of Transportation Material's Division Approved List No. 78 for cold patch material:

[http://www.virginiadot.org/business/resources/Materials/ApprovedLists/Materials Approved Lists.pdf](http://www.virginiadot.org/business/resources/Materials/ApprovedLists/Materials%20Approved%20Lists.pdf)

2. All Cold Mix Asphalt supplied to FW shall be high performance pavement patching material capable of storage in an uncovered or covered outdoor stockpile for a maximum of 12 months. The Cold

Mix Asphalt shall be uniform, remain flexible and cohesive to -15°F and be capable of retaining adhesive qualities in wet applications. The Cold Mix Asphalt shall be able to repair asphalt, concrete, surface treated roads and shall not require removal and replacement if the pavement is overlaid.

3. By submitting an Offer in response to IFB No. 17-58, the Contractor is guaranteeing their ability to manufacture and sell Cold Mix Asphalt to FW for all 12-months of any contracted year without exception. If Contractor's normal business operation mandates a seasonal shutdown of any of their asphalt plants (i.e., January of any contract year), they must own or have access to an alternate asphalt plant with the ability to manufacture and sell Cold Mix to FW to ensure continued and uninterrupted service during the contract year. Any exception taken to this requirement shall deem your firm as non-responsive to the contractual obligations of this Agreement for Service and FW may invoke any and all remedies available per paragraph 2.33 Termination of Contract of this Agreement for Service.
4. Contractor's plant shall be located within 40-round trip miles of at least one of the FW maintenance facilities listed below. Any exception taken to this requirement shall deem your firm as non-responsive to the contractual obligations of this Agreement for Service and FW may invoke any and all remedies available per paragraph 2.33 Termination of Contract of this Agreement for Service.
  - a. Newington Maintenance Facility  
8001 Cinder Bed Road  
Lorton, Virginia 22079
  - b. Chantilly Maintenance Facility  
4400 Henninger Court  
Chantilly, Virginia 20151
  - c. Falls Church Maintenance Facility  
217 Gordon Road  
Falls Church, VA 22046

## **1.2 Materials Certification Submittal Requirement**

- A. All materials used to manufacture Cold Mix Asphalt furnished to FW shall meet all mandatory requirements of this agreement.

- B. The Contractor shall re-certify all sources of supply at the request of FW at any time during the contract term, but in all cases at least annually at contract renewal.

### **1.3 Estimated Quantities**

FW estimates usage of 1,300 tons per contract year. 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. Contractor acknowledges and agrees that FW will only be responsible for the amounts actually purchased

### **1.4 Unit Pricing and Shipping Terms**

All goods shall be furnished FOB Destination with pickup by FW designated staff in FW owned equipment. Failure to include all costs in the Unit Price will be interpreted as included in the Unit Price for each item. FW will not pay any additional charges not included on the Contractor's Bid Submission Form.

### **1.5 Warranty**

- A. In addition to any other warranties expressed or implied, the specific warranties of Merchantability and Fitness for a Particular Purpose apply to all orders placed as a result of this Agreement for Service.
- B. If at any time, any contract item fails to conform to the bid/contract specifications, the Contractor shall, at no additional cost to FW, promptly replace the defective item. If the Contractor is unable to remedy such nonconformity during a time period consistent with the requirements, FW may undertake to remedy the nonconformity and in such case Contractor shall reimburse FW for any costs thereby incurred.

### **1.6 References**

The Contractor shall have submitted three references with their Bid from customers that have purchased similar commodities as contained herein within the past 12 months. References shall be able to attest without reservation to the fact that the Contractor provided the contracted goods without a significant problem of any kind, and at any time during the contract period.

## 2.0 TERMS AND CONDITIONS

This Agreement is subject to the following Terms and Conditions:

### 2.1 Term of Contract and Contract Renewal

- A. **Term:** The term of the contract shall be from November 16, 2017, through November 30, 2018, with the option to extend the contract for an additional four one-year periods, for a maximum total of five years.
- B. **Renewal:** Contract renewals will be renewed at the then current rates, terms and conditions unless a price adjustment is requested (see paragraph 2.4 Annual Economic Price Adjustment of this Agreement for Service). Issuance of a written renewal document and/or purchase order for the optional years will constitute notice of renewal. Failure to renew by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract.

### 2.2 Authorization to do Business in Virginia

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

### 2.3 Additional Quantities

FW reserves the right to purchase additional quantities of the goods or services specified herein at the bid price for up to one year from the date of contract award. By submitting a bid in response to IFB 17-58, the Contractor agrees to provide the item bid, or the then current version of the bid item at the price originally bid.

### 2.4 Annual Economic Price Adjustment

- A. **In the case of annually renewable contracts, Contractor may submit a request for contract price increases once annually for each renewal year.** Economic increases shall be limited to the increase specified in the Bureau of Labor Statistics for the 12 month period ending 90 days prior to the end of the then current contract year.
- B. **For commodities:** If the CPI-U for Washington-Baltimore is not the appropriate index for the item(s) being bid, the Contractor may substitute any other single BLS price index (e.g. Producer Price Index – metals) providing that the substitute price index constitutes the greatest component of the contract item. Multiple price indexes will not be considered for the same bid item. Contractor shall have specified the different index for different bid items based on the conditions identified above. Contractor shall have specified the specific BLS Group and BLS Item that is to be used (e.g. BLS Group: Metals and products; BLS Item: Pressure pipe and fittings, ductile iron (BLS Series ID# WPU10150237) on their Bid.

- C. **ANNUAL ECONOMIC PRICE ADJUSTMENTS:** The CPI-U Washington-Baltimore Index ending 90 days prior to contract term expiration shall govern all Annual Economic Price Increases for the duration of this contract. If the CPI-U Washington-Baltimore Index is not appropriate, the Contractor shall have specified the appropriate Index on their Bid Submission Form. The Index specified below shall govern increases for the full duration of the contract.

VDOT Liquid Asphalt Index

- D. Negative BLS index: If the agreed upon index is a negative number the contractor shall reduce contract rates by the same amount for new contract year.

## 2.5 Anti-Discrimination

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

- A. During the performance of the contract, the Contractor agrees as follows:
1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.
- C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character, or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

## 2.6 Antitrust

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

## **2.7 Arrearage**

By submitting a Bid in response to IFB 17-58, the individual or firm submitting the bid shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits. Contractor further agrees that it shall make diligent efforts to avoid becoming in arrears during the Term of any Contract awarded hereunder.

## **2.8 Assignment of Interest**

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

## **2.9 Availability of Funds**

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

## **2.10 Brand Names**

In the case of bids specifying brand names or models:

- A. Unless otherwise provided for in this Agreement for Service, the name of a certain brand, make or manufacturer does not restrict Contractor to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that FW, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Contractor is responsible to clearly identify the product being offered (by manufacturer's name, model, part number, etc.) and to provide sufficient descriptive literature, catalog cuts and technical detail to enable FW to determine if the product offered meets the requirements of this Agreement for Service. Failure to furnish adequate data for evaluation purposes will result in declaring the Contractor as non-responsive to the contractual obligations of this Agreement for Service. Unless the Contractor clearly indicates that the product offered is an "equal" product, Contractor's offered product will be considered to be the brand name product specified in IFB 17-58.
- B. For purposes of the IFB 17-58 solicitation and this Agreement for Service, FW's designation of any one or more manufacturers and/or suppliers as "preapproved" or "acceptable" shall signify only that such manufacturers and/or suppliers previously have submitted work samples or the like to FW which satisfied FW's requirements. FW's designation of any one or more manufacturers and/or suppliers as "preapproved" or "acceptable" shall in no event be deemed or construed to be a representation or warranty on the part of FW of any such manufacturer's or supplier's capability or capacity (in terms of financial wherewithal, personnel and equipment availability, managerial ability or otherwise) of performing any of the requirements of this Agreement for Service in accordance with the terms and conditions hereof. The Contractor shall conduct such independent investigation into the qualifications, experience and abilities of its selected manufacturers and suppliers as it deems appropriate under the circumstances.

## **2.11 Compliance with Laws, Regulations and Codes**

The Contractor hereby represents and warrants that:

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

## **2.12 Contract Changes / Change Orders**

- A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from IFB 17-58 or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in IFB 17-58, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the FW General Manager or his designated representative. Contract changes shall be in writing, and shall be on official FW letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW General Manager or his designated representative.
- B. Changes can be made to the contract in any of the following ways:
  - 1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  - 2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute

resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

### **2.13 Contractor's Responsibilities**

- A. The Contractor shall be responsible for all products and/or services as required by this Agreement for Service. The use of subcontractors is prohibited unless:
  - 1. A request to include a subcontractor is included in the bid and,
  - 2. The Contractor receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties.
- B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the contract.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subcontractor's failure to protect such facilities and utilities.
- D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its Subcontractor(s). Replacements will be of equal or better quality than the property damaged property, and all such work must be approved by FW Project Manager.

### **2.14 Debarment Status**

By submitting a Bid in response to IFB 17-58, the Contractor certifies that it is not currently debarred by the federal government, the Commonwealth of Virginia, or any agency or department thereof from submitting a bid or proposal in connection with any procurement project and that it is not an agent of any person or entity that currently is so debarred.

### **2.15 Ethics in Public Contracting**

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from IFB 17-58, are proper and in accordance therewith.

### **2.16 Examination of Records**

Contractor agrees that in any resulting contract either FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to any resulting contract. This obligation shall expire five years after the final payment for the final service performed as a result of any and all contract(s) awarded pursuant to this Agreement for Service, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

### **2.17 Familiarity with Specifications**

The Contractor shall bear all responsibility for having thoroughly examined IFB 17-58 and this Agreement for Service in its entirety. The submission of a Bid in response to IFB 17-58 shall be deemed to constitute a representation on the part of the Contractor that he thoroughly examined the solicitation and submitted any and all questions and comments he may have had regarding the

meaning or interpretation of the solicitation to Fairfax Water in the manner prescribed in the IFB 17-58 documents.

## **2.18 Formation of Contract**

- A. The words "Contract" and "Purchase Order" are used interchangeably unless the context otherwise plainly requires. The documents comprising the Contract shall be accorded the following order of precedence:
  - 1. Any Change Orders;
  - 2. All Purchase Orders;
  - 3. Any Addenda to IFB 17-58;
  - 4. IFB 17-58 (including all Appendices and Attachments thereto); and
  - 5. The Contractor's completed Bid Tabulation Form (including any drawings and submittals).
- B. The Contract to be entered into as a result of IFB 17-58 shall be by and between the Bidder as Contractor and FW. It shall include the following items, which are listed in order of precedence:
  - 1. The fully executed Contract between the parties, or a FW Purchase Order,
  - 2. IFB 17-58 and any Addenda to IFB 17-58,
  - 3. The Contractor's response to IFB 17-58 (including any drawings and submittals), and
  - 4. All correspondence between the parties regarding IFB 17-58.
- C. Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

## **2.19 Governing Law; Venue; Waiver of Jury Trial**

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

## **2.20 Incorporation by Reference**

This Agreement for Service is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of this Contract. By submitting a bid in response to IFB 17-58, Contractor acknowledged the VPPA and agreed to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website

<http://www.eva.virginia.gov/pages/eva-vppa.htm>

## **2.21 Indemnification and Responsibility for Claims and Liability**

With respect to any contract that results from IFB 17-58, the Contractor is bound by the following:

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.

- B. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- D. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any loss, including Attorneys' fees arising out of any such claim.

**2.22 Insurance**

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

◆	General Aggregate Limit (Other than Products-Completed Operations)	\$1,000,000
◆	Products-Completed Operations Aggregate Limit	\$ 500,000
◆	Personal & Advertising Injury Limit	\$ 500,000
◆	Each Occurrence Limit	\$ 500,000

For Construction Contracts:

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

## 2.23 No Waiver or Estoppel

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

## 2.24 Pass-through Price Increases and Decreases

For annually renewable contracts:

- A. Increases: FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.
- B. Decreases:
1. Pass through price increases shall cease at the end of the then current contract year and contract pricing will return to the pre-pass through rate. The contractor will be eligible for and only upon request, the annual economic price increase as defined in paragraph 2.4 above.
  2. Prior to the end of the then current contract year, the pass through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.

- C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

## 2.25 Payment Clauses Required in All Contracts

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

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

## 2.26 Payment

- A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax or e-mail. Invoices shall include the FW Purchase Order number and the Contractor's FEIN. Invoices shall not be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
- B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Accounts Payable Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

- C. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Contractor shall waive the requirement in order to remain in consideration.
- D. Refunds: If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor.
- E. Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

## **2.27 Precedence of Terms**

These Agreement for Service Terms and Conditions shall apply in all instances. In the event there is a conflict between the Agreement for Service Terms and Conditions and any FW issued Purchase Order Terms and Conditions, these Agreement for Service Terms and Conditions shall apply.

## **2.28 Price Firm Period**

Bid pricing shall be firm and fixed as originally offered and accepted for the first 12 months of the contract.

## **2.29 Price and Title**

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

## **2.30 Purchase and Sale Transaction**

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

## **2.31 Rider Clause**

Subject to the mutual agreement between the parties, any contract awarded on the basis of IFB 17-58 may be used by any public entity (to include jurisdictions comprising the Metropolitan Washington Council of Governments), to enter into a contract for the services described and defined herein. For single purchases, the contract may be used for up to 12 months from the actual date of contract award. For multi-year contracts, the contract may be used throughout the effective period of the contract. Contracts awarded as a result of IFB 17-58 will be subject to these terms and conditions, and/or such terms and conditions as may be required by the controlling body for the public agency using the contract. Pricing shall be as offered by the successful Contractor and subsequently accepted by FW.

## **2.32 Taxes**

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

## **2.33 Termination of Contract**

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

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

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

## **2.34 Unit Prices Prevail**

In the event of a mathematical error on any Contractor submitted invoice, the Contractor's quoted unit price for each item shall prevail. All costs to provide the goods and/or services specified in this Agreement for Service are shown in Section 3.0 COMPENSATION.

## **2.35 Virginia Freedom of Information Act**

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

## **2.36 Warranty**

- A. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in

accordance with the contract documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.

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

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

**2.37 Faith-Based Organizations**

FW does not discriminate against faith-based organizations.

**2.38 Immigration Reform and Control Act of 1986**

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

**3.0 COMPENSATION**

Bid Item	Description	Est. Quantity	Unit of Issue	Unit Price	Total Price
1.	Cold Mix Asphalt	1,300	Ton	\$150.00	\$195,000.00

**4.0 Authorized Contractor Plant Locations:**

Plant #1 – Address: Centreville Plant

15717 Lee Highway, Centreville, VA 20121Centreville, VA 20121

Projected Seasonal Shut down: Yes X No \_\_\_\_\_

Projected Months of Shutdown (i.e., January of each contract year): January or February

Seasonal Shutdown Alternate Plant Address: Manassas Plant

8747 Vulcan Lane, Manassas, VA 20109

Plant #2 – Address: Manassas Plant

8747 Vulcan Lane, Manassas, VA 20109

Projected Seasonal Shut down: Yes X No \_\_\_\_\_

Projected Months of Shutdown (i.e., January of each contract year): January or February

Seasonal Shutdown Alternate Plant Address: Centreville Plant

15717 Lee Highway, Centreville, VA 20109

**Sources of Supply for all Cold Mix Asphalt**

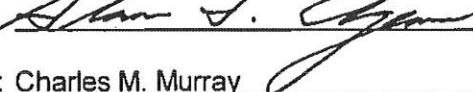
Seaboard Asphalt Products

Luck Stone Corp.

**FAIRFAX COUNTY WATER AUTHORITY**

8570 Executive Park Avenue  
Fairfax, Virginia 22031

Phone: (703) 289-6261  
Fax: (703) 289-6262

By:   
for  
Name: Charles M. Murray

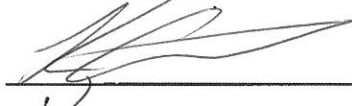
Title: General Manager

Date: 10/16/17

**SUPERIOR PAVING CORP.**

5551 Wellington Road  
Gainesville, Virginia 20155

Phone: (703) 631-0004  
Fax: (703) 257-1008

By:   
Name: KELLY CORDUE

Title: F.O.B SALES

Date: 10/16/17