

SECTION 00700

GENERAL CONDITIONS

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ARTICLE 1 - DEFINITIONS

A. Definitions: The following words and terms, or pronouns used in their stead, shall, wherever they appear in these Contract Documents, be construed as follows, unless a different meaning is clear from the context:

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

"ARCHITECT" shall mean the Architect or Engineers employed 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" shall mean a representative of the Owner or the Engineer acting within the scope of his duties.

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

"BID" or "BID FORM" shall mean the offer of a Bidder to provide specific goods and/or services in accordance with all terms, conditions and specifications indicated in a solicitation. The terms "Bid" and "BID FORM" are synonymous with the word "Proposal" and the two terms are used interchangeably in these Contract Documents.

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

"CHANGE ORDER" shall mean a contractual modification recommended by the Engineer and signed by the Engineer, the Contractor and the Owner which orders any combination of an addition to, deletion or revision of the Work, an adjustment to the Contract Sum or an adjustment to the Contract Period. The form of Change Order is attached to these General Conditions as Exhibit 1.

"CONTRACT" or "CONTRACT DOCUMENTS" shall mean each and all of the various parts of the Contract referred to in Article 3.A.1 of these General Conditions. Such terms shall be used interchangeably in these Contract Documents.

"CONTRACT DRAWINGS" or "DRAWINGS" shall mean only those drawings specifically referred to as such in the Contract Documents.

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

"CONTRACT PERIOD" shall mean the total number of days specified in the Instructions to Bidders for completion of the Work, as such period may be adjusted from time to time in accordance with the Contract Documents.

"CONTRACT SUM" shall mean the amount specified as such in the Award Letter and may be adjusted from time to time in accordance with the Contract Documents.

"CONTRACTOR" shall mean the corporation, limited liability company, partnership or other entity which contracts with Fairfax Water to perform the Work.

"DATE OF BENEFICIAL USE" shall be the date certified in writing by the Engineer when the construction of the Work or specified part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Work can be utilized by the Owner for the purpose for which it was intended.

"DAY" shall mean calendar day.

"DEFECTIVE" shall mean that the Work 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" shall mean a designated portion of the Project.

"ENGINEER" shall mean the Architect or Engineers employed 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" shall mean 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" shall have the same meaning as "OWNER" and in either case shall refer to the Fairfax County Water Authority.

"FINAL COMPLETION" shall mean the point at which all of the Work has been completed in accordance with the requirements of the Contract Documents and final cleaning has been performed, all as determined and certified in writing by the Engineer in accordance with the provisions of Section 01770, Close-out Procedures.

"FURNISH" and "PROVIDE" shall mean to supply and equip 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" shall mean the General Manager of Fairfax Water, or his designee.

"INSTALL" shall mean put in place and ready for 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" shall mean any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction, which are in effect at the time of the opening of Bids.

"MEMBERS" shall mean the members of the governing body of the Fairfax County Water Authority.

"NOTICE" shall mean written notice. Written notice shall be deemed to have been duly served on the Contractor if delivered by U.S. Mail, hand delivery, or facsimile transmission to the Contractor's office at the Project or to the business address or fax number of the Contractor as stated on its Bid Form; 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. Unless otherwise specified herein, Notice shall be deemed to have been duly served on the

Owner if delivered by U.S. Mail, hand delivery, or facsimile transmission to the Director Planning & Engineering, Fairfax Water, 8570 Executive Park Avenue, Fairfax, Virginia 22031, fax number (703) 289-6262. Any Notice that is sent by fax to a party hereunder shall be effective, and shall be deemed to have been received, only upon delivery of a duplicate copy by another means of delivery authorized herein. Either party may, by written notice delivered in the manner prescribed herein, change its address for receipt of Notices hereunder.

"NOTICE TO PROCEED" shall mean the Notice issued by Fairfax Water establishing the date of commencement of the Contract Period.

"OVERHEAD" shall mean the cost of administration, field office and home office costs (including extended costs), general superintendence, office engineering and estimating costs, other required insurance, 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" shall mean the Fairfax County Water Authority, a public body politic and corporate organized and existing under the laws of the Commonwealth of Virginia.

"PROJECT" shall mean the entire improvement which is the subject of the Contract.

"PROPOSAL" The offer of a bidder (or in the case of Competitive Negotiation, offeror) submitted on the prescribed bid form, to perform the Work and to furnish labor and materials at the prices quoted by the bidder. The word "proposal" is considered synonymous with the word "bid" and is used interchangeably in these documents.

"SAMPLES" 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" shall mean all drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to illustrate some portion of the Work. Shop Drawings are not Contract Drawings as so defined.

"SITE" shall mean 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" shall mean all of the directions, requirements and standards of performance applying to the Work, hereinafter detailed and designated as such, or issued in an Addendum or in a Change Order.

"SUBCONTRACTOR" shall mean any person or entity, other than an employee of the Contractor, who contracts 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.

"SUPPLIER" shall mean 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.

"SURETY" shall mean any person or entity that has executed as a surety the Contractor's Performance Bond, Payment Bond, or both, securing the Contractor's performance of this Contract and the payment of his obligations in connection herewith.

"WORK" shall mean everything explicitly or implicitly required to be furnished and done by the Contractor pursuant to the Contract Documents, including any Extra Work.

"WORK ORDER" shall mean 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. A Work Order shall be issued on the form attached to the Contract Documents as Exhibit 2.

"DIRECTED," "PERMITTED," "ORDERED," "DESIGNATED," "PRESCRIBED" and words of like import when used shall mean 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 shall mean 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 his own cost and expense, all labor, materials, equipment, and other facilities, except as herein otherwise provided, as may be necessary and proper for performing and completing the Work. 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, the Work must be performed in accordance with the best modern practice and with materials and workmanship of the highest quality, all as determined by, and entirely to the satisfaction of, Fairfax Water and the Engineer.
3. Unless otherwise expressly provided, the means and methods of construction shall be such as the Contractor may choose; provided, however, that the Contractor shall employ adequate and safe procedures, methods, structures and equipment. 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 understands that for all or some of the Contract Period there will be other contractors on the site which 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.
5. The Contractor acknowledges that, during its performance of the Work, the Contractor may encounter physical and/or subsurface conditions at the Site which differ materially from

those known to, or reasonably anticipated by, the parties at the time the Contractor submitted its bid for the Work. Notwithstanding the foregoing, the Contractor agrees that it shall bear full and complete responsibility for any and all additional costs incurred by the Contractor due to any conditions encountered at the Site which differ in any respect from those known to, or reasonably anticipated by, the parties at such time. Fairfax Water shall in no event be responsible for damage to the Contractor's property or equipment which is caused by any such unknown or unanticipated conditions at the site. The Contractor covenants and agrees that it shall not make any claim for additional compensation from Fairfax Water as a result of any such differing site conditions.

6. 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.
7. 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).

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. These 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.

Only printed or hard copies of the items listed above are Contract Documents. Electronic files shall not be considered Contract Documents.

The Contract Documents will in no event be deemed to include any soil, geotechnical or other reports, and surveys or analysis of any type which may be made available to the Contractor for review or information in connection with this Project.

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).

The Contractor shall immediately report any conflict, error, ambiguity, or discrepancy between the Contract Documents and any provision of any such Law or Regulation or of any such standard, specification, manual, code, or custom to Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and to the Engineer in writing, and shall not proceed with the Work affected thereby until Fairfax Water resolves the matter in writing; provided, however, that the Contractor shall not be liable for damages to Fairfax Water or the Engineer for failure to report any such conflict, error, ambiguity, or discrepancy unless Contractor knew or reasonably should have known thereof.

5. The Contractor and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Fairfax Water:
 - a. shall not 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; and
 - b. shall not reuse any of such Drawings, Specifications, other documents, or copies on extensions of the Project or any other project without written consent of Fairfax Water and Engineer and specific written verification or adaptation by the Engineer.
- B. Entire Contract: This Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements. 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. This requirement for any modifications to be in writing may not be orally modified.
- 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 whatsoever shall be made by the Contractor against any officer, Member, Authorized Representative or employee of Fairfax Water or 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 5 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 5 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 5 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. 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.

ARTICLE 4 - CONFORMANCE WITH CONTRACT DOCUMENTS

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.
- C. 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. The terms of 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. 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 or that there is no adequate remedy at law.

ARTICLE 5 - ROYALTIES AND PATENTS

- A. Patented Devices, Material and Processes: The Contract Sum includes all royalties and costs Contractor arising from any patents, trademarks and/or copyrights incorporated or otherwise involved in the Work. Whenever the Contractor uses any design, device, material or process covered by letters of patent or copyright, the Contractor shall indemnify and hold harmless Fairfax Water and the Engineer, their officers, Members, Authorized Representatives and employees from any and all claims for infringement by reason of the use of any such patented or copyright-protected design, device, tool, material, equipment, or process to be employed, supplied or performed under the Contract, and shall indemnify and hold harmless Fairfax Water and the Engineer, their officers, Members, Authorized Representatives, and employees for any costs, expenses and damages which may be incurred by reason of any such infringement at any time during the prosecution or after the completion of the Work. Notwithstanding the foregoing, the Contractor shall not have liability under this Article 5 to the extent that any infringement arises solely by virtue of a design or implementation supplied to the Contractor by Fairfax Water.

ARTICLE 6 - PROTECTION OF PERSONS AND PROPERTY

- A. Safety and Protection:
1. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall comply with all applicable laws, rules, regulations and ordinances relating to safety and shall provide all necessary protection to prevent damage, injury, or loss 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. The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until Final Completion of the Work, unless otherwise agreed upon in writing. 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)
- 3. The Contractor shall give notices and shall comply with all applicable laws, ordinances, rules and regulations bearing on the safety of persons or property or their protection from damage, injury or loss.
- 4. 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 Project 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 for use in connection with the Work.
- 5. The Contractor shall have 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. The Contractor shall maintain Material Safety Data Sheets on the site for all materials supplied by the Contractors and all Subcontractors. 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. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from Fairfax Water or Engineer, is obligated to act at his discretion and risk to prevent and/or minimize threatened damage, injury, or loss. The Contractor shall give 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. Until final acceptance of the Work by Fairfax Water, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, or injury. The Contractor shall take proper precautions to protect the finished and unfinished Work from loss or damage, pending completion and final acceptance of all Work included in the Contract. Such precautions shall not relieve the Contractor from any and all liability and responsibility for loss or damage to the Work occurring before final acceptance by Fairfax Water. 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 therefore, 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 any access or observation on the part of Fairfax Water or the Engineer to 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, at any time by a Change Order or Work Order, require the performance of such Extra Work 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 changes to the Work ordered thereby (the "Changed Work"), including, but not limited to, all Overhead and all other direct and indirect costs associated with the Changed Work and any and all adjustments (of whatever nature) to the Contract Sum or to the Contract Period attributable to the Changed 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 of 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. The adjustment in the Contract Sum, if any, shall constitute full and mutual accord and satisfaction for all costs related to this 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 submitted by the Contractor upon a certified statement supported by receipted bills. Such statements shall

be submitted for payment by Fairfax Water within 30 days after such Extra Work was performed and 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 7 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 its full and final completion in strict accordance with the requirements of the Contract Documents, and will complete the Work within the Contract Period.
2. The actual date of Beneficial Use will be established after the required inspections have been conducted in accordance with the Contract Documents and all other contractually required submittals have been reviewed and approved by Fairfax Water and the Engineer.
 - a. When the Contractor considers the Work ready for its intended use, Contractor shall notify Fairfax Water and Engineer in writing that the Work is complete for Beneficial Use.
 - b. Within a reasonable time thereafter, Fairfax Water, the Contractor, and the Engineer shall perform an inspection of the Work to determine the status of completion. If the Engineer does not consider the Work complete for Beneficial Use, the Engineer will notify the Contractor in writing giving the reasons therefor. 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. There shall be attached to the notice a tentative list of items to be completed or corrected before final payment, as prepared by the Engineer.

- c. Fairfax Water will determine in its sole discretion whether Beneficial Use has been achieved within the applicable Contract Period milestone.
3. The actual date of Final Completion will be established after final inspections have been completed and all other requirements of the Contract Documents have been satisfied. Fairfax Water will determine in its sole discretion whether Final Completion has been achieved within the Contract Period.

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 Supplemental Conditions (Section 00800) 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 therefore. The Contractor and his Surety hereby waive any defense as to the validity of any liquidated damages stated herein as they may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

C. Extension of Time:

1. 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 beyond the date of completion fixed by the terms of the Contract will be effective unless granted in writing, and signed by Fairfax Water. Notice of delay must be given in writing 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 the General Conditions. Each such notice shall: (i) be submitted in written, narrative form on the Contractor's letterhead; (ii) be identified as a "Notice of Delay;" (iii) shall describe, in reasonable detail, the nature of the delay encountered; and (iv) shall 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.1. In case of a continuing cause of delay, only one notice shall be required. The Contractor's application for any extension of time shall be in writing and shall be addressed 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 the delay. Any such application for extension of time shall: (i) be on the Contractor's letterhead; (ii) describe in reasonable detail the reasons for and causes of the delay; (iii) demonstrate in a clear and convincing fashion the extent to which, if any,

the delay impacts the Critical Path for the Project; (iv) contain a justification for each additional day which is requested; and (v) be identified as an “Application for Extension of Time. If the delay should continue for longer than 20 days, the Contractor must submit the substantiation and support for such delay no less frequently than in 20 day increments.

2. If such an application is made, 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, or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes, which causes of delay mentioned in this section, in the opinion of Fairfax Water, are entirely beyond the expectation and control of the Contractor.
3. 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 may determine 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. 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. 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 Extra 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. 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 causes within their control (such a delay referred to herein as an "unreasonable delay"). 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) an explanation as to why the delay is deemed to be "unreasonable;" and (iii) a clear demonstration of how such unreasonable delay was caused solely and exclusively by acts or omissions of Fairfax Water, its agents and employees, and due to causes within their control. 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 "unreasonable;" and (ii) the extent, if any, to which the delay was caused by acts or omissions of Fairfax Water, its agents or employees, and due to causes within their control. In the event it is determined that the Contractor (either on its behalf or on behalf of a Subcontractor) is entitled to costs or damages on account of such an Owner-caused unreasonable delay, the amount thereof shall be determined as set forth in paragraph 8.C.9.
9. The parties recognize the difficulty in calculating damages suffered by the Contractor as a result of an unreasonable delay. As such, the parties hereby agree that the amount set forth in the Supplemental Conditions (Section 00800) shall be the liquidated damages for each and every day that the Contractor (either on its behalf or on behalf of a Subcontractor) and/or any Subcontractor(s) incurs compensable costs or damages for unreasonable delays in performing this Contract as aforesaid, and that this figure represents a reasonably accurate forecast of the daily aggregate, anticipated actual damages in the event of an unreasonable delay. The parties hereby acknowledge and agree that the liquidated damages provided for hereunder represent 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 the stated amount. The Contractor shall include in each of its subcontract agreements for the Project a liquidated damages provision similar to that set forth herein.

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 first submitted in accordance with the requirements of Article 8 shall be null and void and deemed to have been waived by the claimant.

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:

- a. the Contractor fails to begin the Work when required to do so; or
- b. at any time during the progress of the Work it shall appear that the Contractor is not prosecuting the Work with reasonable speed, or is delaying the Work unreasonably or unnecessarily; or
- c. the force of workmen or quality or quantity of material furnished is not sufficient to insure completion of the Work within the specified time and in accordance with the Specifications; or
- d. the Contractor fails to make prompt or proper payments for materials or labor or to Subcontractors for Work performed under the Contract; 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;

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 the event that Fairfax Water elects to declare the Contractor in default, Fairfax Water shall notify the Contractor by written notice describing the nature of the default and providing the Contractor a right to cure such default within 3 days after the date of notice, or within such longer period as Fairfax Water, in its sole

discretion, will determine. In the event the default is not cured within three days after the date of the notice, or within such longer time period specified by Fairfax Water, Fairfax Water will have the right to take any actions necessary to correct or complete the Work, as set forth in this Article 9.

B. Contractor's Duty upon Default:

1. Immediately, but no later than three days after receipt of notice that he is in default hereunder, the Contractor shall discontinue all further operations on the Project or specified part thereof, 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 Default:

1. If the Contractor does not cure the default or comply with these provisions, Fairfax Water, three days after declaring the Contractor in default, may 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.
- E. **Death or Incompetence of Contractor:** In the event of the death or legal incompetence of a Contractor who shall be an individual or surviving member of a sole proprietor contracting firm, such death or adjudication of incompetence shall not terminate the Contract, but shall constitute a default hereunder to the effect provided in paragraph 9.A hereof, and the estate of the Contractor and his Surety shall remain liable hereunder to the same extent as though the Contractor had lived. Notice of default, as provided in paragraphs 9.A hereof, shall not be required to be given in the event of the death or adjudication of incompetence of a Contractor who is an individual or a sole proprietorship.
- F. **Fairfax Water's Right to Terminate for Cause:**
1. In the event:
 - a. legal proceedings have been instituted by others than Fairfax Water in such manner as to interfere with the progress of the Work and to potentially subject Fairfax Water to the peril of litigation or outside claims; or
 - b. the Contractor is adjudicated bankrupt or makes an assignment for the benefit of creditors; or
 - c. in any proceeding instituted by or against the Contractor an order is made or entered granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of his debts or liabilities; or
 - d. a receiver or trustee is appointed for the Contractor or the Contractor's property; or
 - e. the Contract or any part hereof is sublet without the prior written consent of Fairfax Water or
 - f. 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
 - g. the Work to be performed under this Contract is abandoned;
 - h. the Contractor fails to cure any default declared pursuant to Article 9.A within the time period specified with respect thereto;

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 Notice to the Contractor.

2. If, after issuance of a Notice of termination of the Contract under the provisions of this Section 9.F.1., it is determined for any reason that the Contractor was not in default under the provisions of paragraph 9.A.1.a through 9.A.1.f, or that cause for such termination

otherwise did not exist under the provisions of paragraph 9.F.1.a through 9.F.1.h, 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 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 thereupon owing 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.

- G. **Fairfax Water's Right to Terminate for Convenience:** Fairfax Water will have the right to terminate this Contract at its own convenience for any reason by giving seven days prior notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the lesser of: (1) the actual cost of any Work, labor or materials actually performed or 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 bid breakdown 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. Neither the Contractor nor any Subcontractor shall be entitled to receive anticipated profits on unperformed portions of the Work. 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 or unit prices in the Contractor's bid and the award made thereon, taking into consideration 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 said 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 therefore in the Contract Documents.

- B. Submission of Bid Breakdown: Within 20 days after the execution of this Contract, the Contractor shall submit to the Engineer, in duplicate, 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; 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 bid breakdown to a form acceptable to the Engineer. Following acceptance of the bid breakdown, 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 price,
 - e. damage to the Owner or another,
 - 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 act or neglect of the Contractor of any of his Subcontractors.
 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 therefore 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 in any other manner, remuneration 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, etc. The Contractor shall not be entitled to interest and shall not have any claim 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 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 fifteen (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 defined in 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, shall operate to release the Contractor or his Surety from any obligations under this Contract.

G. Payments to Subcontractors:

1. 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 intention to withhold all or part of the amounts due the Subcontractor pursuant to paragraph 10.G.1.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.1.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 \$1,000,000 combined single limit per person/occurrence. This insurance shall include coverage for all of 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. The Contractor shall require each of his Subcontractors to procure and maintain during the term of his subcontract, subcontractor's commercial General Liability Insurance of the type specified in paragraph 11.A.1.a, in amounts satisfactory to the Contractor.
 - c. 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 of 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
 - d. Automobile Liability Insurance, including employee's ownership liability and hired automobile insurance, \$1,000,000 combined single limit.
 - e. All risk insurance covering damage, loss or injury to the Work. The policy shall 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. The policy shall be in an amount equal to the Contract Sum and shall apply to any and all Projects under construction during the term of this Contract.
2. 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 on his 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.
3. 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 as a result 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.
4. 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 2 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 1 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.
5. 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.
6. 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 ten 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 affect, 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 current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, 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 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.

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. Before making any subcontract, the Contractor must submit a written statement to the Engineer setting forth the name and address of the proposed Subcontractor and the portion of the Work and materials which the proposed Subcontractor shall perform or provide, as the case may be. The Contractor also must furnish with respect to each proposed Subcontractor an OSHA Form 300 [a list of citations for safety violations] and a completed "Subcontractor Qualification Form" attached to these General Conditions, all intended to demonstrate to Fairfax Water that the proposed Subcontractor 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. A Subcontractor Qualification Form must be submitted for each subcontractor performing work valued greater than \$100,000 and the OSHA Form 300 shall be submitted at the time the Subcontractor Qualification Forms are submitted. As to each proposed Subcontractor, the Contractor has the burden of demonstrating that the Subcontractor is qualified in all respects to perform the designated portion of the Work. 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.

3. If Fairfax Water finds in its sole discretion that the proposed Subcontractor meets the minimum qualifications acceptable to Fairfax Water, the Contractor will be notified 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 as described herein 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, or omissions of his Subcontractors and of his 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, losses, costs, damages, penalties, liabilities and fees (including reasonable attorneys' fees) and expenses resulting from: (i) any material breach of the representations, warranties, agreements and covenants of the Contractor contained in the Contract Documents; (ii) any injuries to persons or property caused by the wrongful conduct or alleged wrongful conduct 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) 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: No claim of any nature shall be made against Fairfax Water by or on behalf of a Subcontractor unless the Contractor first shall have: (i) evaluated such claim thoroughly and determined it to be meritorious; (ii) issued a written notice to the Subcontractor finding the Subcontractor's claim to be meritorious and setting forth any additional compensation or additional days to be paid or granted to the Subcontractor on account of such claim; and (iii) paid the Subcontractor in full for such claim. In presenting such a claim, the Contractor shall provide Fairfax Water with a copy of the written notice to the Subcontractor and with evidence of payment in full of the Subcontractor's claim. No such claim shall exceed the amount actually paid to the Subcontractor by the Contractor.
- 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 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 deems it in the interest of Fairfax Water to do so.
- c. To suspend the whole or any part of the Work whenever in his judgment, such suspension is required: (1) in 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 will deem it necessary.

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 3 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 7 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) the Work shall be free of defects in workmanship, materials and/or equipment, (b) materials and equipment furnished under the Contract Documents shall be of good quality and new (unless otherwise specified in the Contract Documents), (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 (d) the Work shall strictly conform to and meet all of the requirements of the Contract Documents; and (e) the Work shall be fit for use in accordance with its intended function.

2. The foregoing Warranties shall commence on the Date of Final Completion and, unless a different period of time is specified herein, shall remain in effect for a period of one year. 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 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 (3) 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 3-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 7 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 sought to 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 other than specifically to correct the Work if it provides for a longer warranty duration.

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), 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:
 - a. Shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. Will state that he is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor.
 - c. 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.
 - d. 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.

2. The Contractor shall include the provisions of the foregoing paragraphs 1.a, b, c and d 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.

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 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. He 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. He 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 him is true and correct in all respects;
 5. He 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.

EXHIBITS TO THE GENERAL CONDITIONS

Payment Breakdown

Application and Certificate for Payment

Record of Minor Change

Clarification

Work Order

Request for Change Proposal (RCP)

Contract Change Order

Certificate of Beneficial Use

Certificate of Final Completion

Consent of Surety Company to Final Payment

Final Payment Affidavit and Release of Claims

Subcontractor Qualification Form

Proposed Change Order

END OF SECTION 00700