

IFB #20-050 – Pavement Restoration



MORIN BUILDING  
8570 EXECUTIVE PARK AVENUE  
FAIRFAX, VIRGINIA 22031

**INVITATION FOR BIDS**

**Number:** 20-050

**Title:** Pavement Restoration

**Date Issued:** September 10, 2020

**Deadline for Questions:** Prior to 2:00 p.m., September 19, 2020

**Bid Due Date:** Prior to 2:00 p.m., September 25, 2020

**IFB Delivery Location and  
Place of Bid Opening:** Procurement Department  
Fairfax Water  
8570 Executive Park Avenue  
Fairfax, Virginia 22031

**Procurement Contact:** Name: Torry Huff, Senior Procurement Specialist, CPPO  
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## SECTION 1

### 1. INTRODUCTION AND OBJECTIVE

#### 1.1 Introduction

The Fairfax County Water Authority, doing business as Fairfax Water (FW) was created under the Virginia Water and Waste Authorities Act pursuant to resolutions adopted by Fairfax County on September 26, 1957. Fairfax Water is managed by a ten-member Board of Directors appointed for three-year terms by the Fairfax County Board of Supervisors.

#### 1.2 Objective

The objective of this Invitation to Bid (IFB) is to accept bids from qualified contractors registered in the Commonwealth of Virginia, to establish a 12-month contract with the option of four 12-month renewals to perform work including, but not limited to repairs to roadway pavement in accordance with VDOT specifications.

This work may include the restoration of curb, curb and gutter, pavement sections, sidewalk, and various other improvements that are generally associated with roadway infrastructure. All prospective bidders must have, in writing, an agreement from a certified asphalt concrete producer, which states the availability of asphalt production for emergency purposes as described in these documents. This written documentation must be submitted with the bid.

### 2. BACKGROUND

Fairfax Water currently makes over 900 excavations in public roads each year for the emergency and routine repair of water mains, water services, fire hydrants and valves in addition to installing new water services. These excavations must be backfilled with approved material and paved within a regulated period according to standards controlled under permits issued by the Virginia Department of Transportation (VDOT). The accepted bidder will be responsible for the complete restoration of the excavated area which may include curb, curb and gutter, pavement sections, or sidewalk and associated pavement stripping.

### 3. DEFINITIONS

- A. **Award** – means the decision by FW to execute a contract after all necessary approvals have been obtained.
- B. **Bid** – means the response by a Bidder to an Invitation for Bids issued by a procurement agency to obtain goods or services.
- C. **Bidder** – means any person submitting a response to an IFB.
- D. **Contract** – means the formal agreement as a result of this solicitation.
- E. **Contract Completion** – means the point in time when FW Project Manager confirms in writing that the contract has been completed as contracted for and the Contractor is released from any further obligations. All remaining payments due the Contractor shall be approved for payment at this time.

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- F. **Contractor** – means the successful Bidder receiving a contract as a result of this solicitation.
- G. **Default** – means that the Contractor has failed to fulfill its contractual obligations properly and on time.
- H. **FW** – means Fairfax Water. The terms Owner and FW have the same meaning.
- I. **Notice** – The term “Notice” or the requirement to notify means a written communication delivered in person, by facsimile, or by certified or registered mail to the individual or firm, or to an officer of the Contractor for whom it is intended.
- J. **Owner** – Fairfax County Water Authority.
- K. **Project** – The term “Project” means the same as the phrase “the Work.”
- L. **Project Manager** – means FW employee assigned to this project for purposes of oversight of the project. The Project Manager is responsible for all aspects of the contract (excluding contract modifications) after contract award, including but not limited to approving design changes, and authorizing payment for completed work.
- M. **Specifications** – The term “Specifications” describes the physical or functional characteristics or the nature of a good, service or construction item required. It may include a description of any requirement for inspecting, testing, or preparing a good, services or construction item for delivery.
- N. **Work** – The word “Work” shall include all material, labor equipment and tools, appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and any such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated or as required by industry practice, custom or usage to complete the project as proposed by the Bidder and accepted by FW.

#### **4. SPECIFICATIONS/ SCOPE OF WORK**

**Work shall be performed meeting the specifications contained within this document. The following sections are included herein and all work shall be performed to meet these sections.**

**Section 01110 Summary of Work**  
**Section 01200 Measurement and Payment**  
**Section 01400 Regulatory Requirements**  
**Section 01700 Execution Requirements**  
**Section 02700 Paving and Surfacing**

#### **5. INSTRUCTIONS TO BIDDERS**

##### **5.1 Questions and Communications**

All contact between prospective Bidders and FW with respect to this solicitation will be formally held at scheduled meetings or in writing through the Issuing Office. Questions and comments regarding the meaning or interpretation of any aspect of this solicitation must be submitted in writing to the Procurement Contact identified on the cover page to this solicitation and must be received on or before the deadline for submitting questions. Only written questions will be accepted. Questions and/or comments which are submitted after the deadline set forth on the cover page to this solicitation will not be answered.

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FW shall respond to all timely questions and comments that are properly submitted and are deemed to address a matter that is relevant and substantive in nature within a reasonable period of time, in the form of a written Addendum that will be transmitted to all prospective Bidders at the addresses furnished to FW for such purpose. Oral communications between FW and any Bidder regarding the interpretation or meaning of any aspect of this IFB are not authorized and may not be relied upon for any purpose.

**5.2 Bid Opening and Instructions for Submitting Bids**

The deadline for submitting bids and the location for opening bids is shown on the cover sheet. Bids will be opened immediately following the deadline for submitting bids. Bids will be opened in accordance with the provisions of the Virginia Public Procurement Act.

All bids must be submitted in a sealed package(s), no other form of submission will be accepted (i.e., E-mail, Facsimile, etc.). Bid packages must be identified on the outside as follows:

From: \_\_\_\_\_

Name of Bidder	Due Date
Street <b>S A M P L E</b>	IFB No.
City, State, Zip Code	IFB Title

Attn: Torry Huff

**5.3 Familiarity with Specifications**

Each Bidder shall bear responsibility for thoroughly examining this solicitation in its entirety. In the event that Bidder has any questions or comments regarding the proper meaning or intent of any aspect of this solicitation, then such Bidder shall submit all such questions and comments in writing to the Procurement Contact identified on the cover sheet of this solicitation.

The submission by a Bidder of a Bid in response to this solicitation shall be deemed to constitute a representation on the part of such Bidder that it has thoroughly examined this solicitation and has submitted any and all questions and comments it may have regarding the meaning or interpretation of this solicitation to Fairfax Water in the manner prescribed herein.

**5.4 Bid Submission Form**

Attachment 1 is the bid submission form. It must be completed and signed by an agent who is fully authorized to bind the individual or organization submitting the offer to sell, to the terms, conditions and specifications contained herein as well as any addenda to this solicitation.

**5.5 Proprietary Information**

- A. Except as provided herein or as otherwise set forth in §2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 *et seq.*, the “Act”), all proceedings, records, contracts and other public records relating to procurement transactions shall be open to inspection in accordance with the Virginia Freedom of Information Act (Va. Code Ann. §2.2-3700 *et seq.*, the “Virginia FOIA”).

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- B. A Bidder, Offeror or Contractor shall have the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which shall not be subject to inspection pursuant to either §2.2-4342 of the Act or the Virginia FOIA, by submitting to Fairfax Water prior to or at the time of submission of its proposal or bid a separate, written notice on its letterhead stationery setting forth the following: (i) a statement indicating that the Bidder, Offeror, or Contractor wishes to invoke the protections of this section; (ii) an identification of the data or other materials for which protection is sought; and (iii) a statement with regard to why protection is necessary.

### **5.6 Contractor Registration**

- A. Bidders shall comply with the rules and regulations relating to the practice of General Contracting in the Commonwealth of Virginia. Bidders are required under Chapter 11, Title 54.1, Code of Virginia, to show evidence of certificate of registration before Bids may be received and considered where: (1) the total value referred to in a single contract or project for the performance or management of construction, removal, repair or improvements is \$70,000 or more, or (2) the total value of all such construction, removal, repair or improvements undertaken by such bidder within any 12 month period is \$500,000 or more.
- B. For joint ventures, Bidders may provide either Contractor Registration Numbers for each party or a Contractor Registration Number for the joint venture.
- C. Each bidder shall list the Contractor Registration Number on the outside of the envelope containing his Bid and in his Bid under his signature with the following notation: "Registered Virginia Contractor No. \_\_\_\_\_". If Contractor Registration is not required, use the following notation in those locations previously described. "Registration not required under Chapter 11, Title 54.1, Code of Virginia."
- D. Contractor's registration requirements shall apply to all subcontractors.
- E. A contractor operating as a partnership or under an assumed or fictitious name shall file a certificate as provided by Chapter 5 Title 59.1 of the Code of Virginia of 1950, as amended.

### **5.7 State Registration of Contractor**

- A. If a contract is for one hundred and twenty thousand dollars (\$120,000) or more, or if the total value of all construction, removal, repair or improvements undertaken by the bidder within any twelve-month period is seven hundred-fifty thousand dollars (\$750,000) or more, the bidder is required under Title 54, Chapter 11, Code of Virginia (1950), as amended, to show evidence of being licensed as a "Class A Contractor." (Non-Virginia licenses are not acceptable). If a contract is seventy-five hundred (\$7,500) dollars or more but less than one hundred and twenty thousand dollars (\$120,000), the bidder is required to show evidence of being licensed as a "Class B Contractor". If a contract is one thousand dollars (\$1,000) or more but less than seventy-five hundred dollars (\$7,500), the bidder is required to show evidence of being licensed as a "Class C Contractor."
- B. The Code of Virginia does not allow an unlicensed contractor to submit a bid where the

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resultant contract will require a license. Bidders shall note the applicable VA License Number and include copies of the applicable licenses with their bid package.

### **5.8 Exceptions/ Additions**

No exceptions or additions to the Specifications/Scope of Work or Contract Terms and Conditions shall be permitted. Any questions or concerns regarding any part of the IFB shall be submitted to the Department of Procurement prior to the date specified in the Questions and Inquiries section above. Bids containing any exceptions to the Specifications/Scope of Work or Contract Terms and Conditions or submitting additional Terms and Conditions shall be deemed non-responsive and rejected. Exceptions or additions proposed after bid submission by the successful bidder shall not be accepted.

### **5.9 Addenda to the IFB**

- A. FW reserves the right to amend this solicitation at any time prior to the deadline for submitting Bids. If it becomes necessary to revise any part of this IFB, notice of the revision will be given in the form of an Addendum that will be provided to all prospective Bidders who are on record with FW as having received this solicitation. If, in the opinion of FW, the deadline for the submission of bids does not provide sufficient time for consideration of any Addendum, then such deadline may be extended at the discretion of FW.
- B. It shall be the responsibility of each Bidder to contact the Purchasing Contact identified on the cover page to this solicitation prior to submission of a bid hereunder in order to determine whether any Addenda have been issued in connection with this procurement. Notwithstanding any provision to the contrary, the failure of any Bidder to receive any Addenda shall neither constitute grounds for withdrawal of its bid, nor relieve such Bidder from any responsibility for incorporating the provisions of any Addenda in its proposal.
- C. Acknowledge receipt of each addendum by signing it and submitting it by the bid deadline. Failure to return a signed addendum may result in a bid being determined non-responsive.

### **5.10 Late Bids**

Bids or unsolicited amendments to bids arriving after the bid submission deadline will not be considered.

### **5.11 Acceptance/ Rejection of Bids**

- A. After all bids have been examined, Fairfax Water reserves the right to reject any and all bids or portions of bids, if by doing so, it is deemed to be in the best interests of Fairfax Water. Fairfax Water also reserves the right to be the sole judge of the qualifications of the bidder in performing under the terms as specified in the contract.
- B. Fairfax Water reserves the right to reject any bid if investigation of such bidder fails to satisfy Fairfax Water that such bidder is properly qualified to carry out the obligations and to complete the Work contemplated therein. Any or all bids will be rejected if there is reason to believe that collusion exists among the bidders.

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- C. Bids will be considered irregular and may be rejected if they show serious omissions, alterations in form, additions not called for, conditions or unauthorized alternates or irregularities of any kind. Fairfax Water reserves the right to reject any or all bids and to waive such technical errors as may be deemed to be in the best interests of Fairfax Water.
- D. Insertion of price escalator clauses, delivery costs, disclaimers or limitations of liability, and the like which are not expressly allowed in this IFB may be cause for rejection of the bid.

### **5.12 Estimated Quantities**

Quantities for the various items of Work, equipment and materials, which may be set forth in the Bid Form, are considered to be approximations only and are given for the sole purpose of providing a uniform basis for the comparison of Bids. The quantities actually required to complete the Work may be more or less than so estimated.

### **5.13 Arrearage**

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

### **5.14 Contract Award**

Contract award will be made to the lowest responsive and responsible bidder based on total cost. Whenever the lowest responsive and responsible bidder is a resident of a state other than Virginia and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid preference shall not be considered.

### **5.15 Withdraw of Bid**

- A bidder may withdraw its Bid before the time fixed for receiving Bids without prejudice by communicating its desire to withdraw in writing to the Procurement Manager of Fairfax Water prior to such date and time. When the Bidder's communication is received, the unopened Bid will be returned to the Bidder's authorized agent by means determined by Fairfax Water.
- B. Except as set forth below, no bid may be withdrawn after the date and time fixed for the submission of bids, except by written request submitted in the manner prescribed herein. A bidder may withdraw its bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by the objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

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- C. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.
- D. The procedure for bid withdrawal is as follows:
- The Bidder must give notice in writing of its claim of right to withdraw its bid within two business days after the conclusion of the bid opening procedure. The Bidder must submit to Fairfax Water with its notice the original work papers, documents, and materials used in the preparation of its bid. A mistake may be proven only from the original work papers, documents and materials delivered to Fairfax Water as required herein.
- E. No bid may be withdrawn when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
- F. If a bid is withdrawn under the authority of this Section, the lowest remaining bid shall be deemed to be the low bid. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the work outlined in these Contract Documents.
- G. If Fairfax Water denies the withdrawal of a bid under the provisions of this section, it shall notify the Bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is the lowest responsible and responsive bidder hereunder.

### **5.16 Public Notice of Award**

Public notice of award will be posted on the official FW web site:  
(<http://www.fairfaxwater.org/procurement>).

### **5.17 Authorization to do Business in Virginia**

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

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### 5.18 Compliance with Laws, Regulations and Codes

The Bidder hereby represents and warrants that:

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

### 5.19 Debarment Status

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

### 5.20 Duration of Bids

Bids shall be valid for a minimum of 90 days following the deadline for submitting bids. If an award is not made during that period, all bids shall be automatically extended for another 90 days. Bids will be automatically renewed until such time as either an award is made, or proper notice is given to FW of Bidder's intent to withdraw its bid. Bids may only be withdrawn by submitting written notice at least seven days before the expiration of the then current 90-day period.

### 5.21 Formation of Contract

- A. The words “Contract” and “Purchase Order” are used interchangeably unless the context otherwise plainly requires. The documents comprising the Contract shall be accorded the following order of precedence:
  - 1. The Contract including any Amendments or Change Orders;
  - 2. All Purchase Orders;
  - 3. Any Addenda to the IFB;
  - 4. This IFB (including all Appendices and Attachments hereto); and
  - 5. The Bidder’s completed Bid Tabulation Form (including any drawings and submittals).
- B. The contract to be entered into as a result of this IFB shall be by and between the Bidder as Contractor and FW. It shall include the following items, which are listed in order of precedence:
  - 1. The fully executed contract between the parties, or FW Purchase Order,
  - 2. The IFB and any Addenda to the IFB,

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3. The Bidder's response to the IFB (including any drawings and submittals), and
  4. All correspondence between the parties regarding this IFB.
- C. Anything called for by one of the contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other contract documents shall have the intended effect.

### **5.22 Unit Prices Prevail**

In the event that there is a mathematical error on the summary sheet, the unit price for each item shall prevail. All costs to provide the goods and/or services specified in this solicitation shall be shown on the attached bid summary sheet. Line items left blank will be interpreted as at no cost to FW.

### **5.23 Negotiation with Low Bidder**

If the lowest bid submitted by a responsive and responsible bidder exceeds available funds for this procurement, then Fairfax Water may, in its discretion, conduct negotiations with the lowest responsive and responsible bidder (the "Low Bidder") in an effort to obtain a contract price that is within available funds. In such event, Fairfax Water will notify the Low Bidder verbally or in writing that its bid exceeds available funds and will schedule a conference with the Low Bidder, Fairfax Water staff, and such advisors and consultants as Fairfax Water deems appropriate in order to discuss possible modifications to the scope of the procurement that may result in a price that is within available funds. The conference and any subsequent negotiations may be conducted in person or by telephone. If, during the conference, the parties arrive at an acceptable modification to the scope of the project and a contract price that is within available funds, then Fairfax Water may award a contract to the Low Bidder based upon the newly-modified terms and conditions. Otherwise, the Low Bidder will, within 15 days after the date of the conference (or such longer or shorter period as may be specified in writing by Fairfax Water), submit to Fairfax Water a written addendum to its original Bid Form which describes its proposed modification(s) to the scope of the procurement and sets forth the Low Bidder's newly adjusted bid price. Fairfax Water may conduct further negotiations with the Low Bidder or request additional clarifications or modifications. If the Low Bidder's proposed modifications are acceptable to Fairfax Water and the associated contract price is within available funds, then Fairfax Water may award a contract to the Low Bidder based upon the modified terms and conditions. If the proposed modifications are not acceptable to Fairfax Water, or the associated price reductions are not within available funds, then Fairfax Water will terminate negotiations and reject all bids.

### **5.24 References/ Bidder Qualifications**

- A. Each Bidder shall submit with his Bid the following supplemental information:

A list of three references including the customer name, address, name and telephone number of a contact person who has first-hand knowledge of the bidder's performance. Each reference should include a brief description of the work performed. References must be for completed contracts for performing work of the type and magnitude, as near as possible, as that outlined in this IFB. An agreement from a certified asphalt concrete producer, which states the availability of asphalt production for emergency purposes as described in these documents.<sup>3</sup> Any additional documents or other information which the Bidder considers necessary to satisfy Fairfax Water of the ability of the Bidder, financial or otherwise, to carry out the work.

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- B. Fairfax Water may make such other investigations as are deemed necessary to determine the capability of the Bidder to furnish the necessary services as described herein. Such investigations may include inspection of the Bidder's office and other support facilities. The Bidder shall furnish to Fairfax Water all data and information requested during the investigation in order to determine the Bidder's ability, financial or otherwise, to perform under this Contract. Fairfax Water reserves the right to reject any Bid, if the investigation of a Bidder fails to satisfy Fairfax Water that the Bidder is qualified to carry out the obligations of the Contract, or has to the best of his knowledge and belief, not submitted statements or information which are true, correct, complete, and made in good faith.
- C. Failure of a bidder to submit the above referenced information may render the bid to be deemed nonresponsive and the bid may not be considered for award.

### **5.25 Insurance Claims against Bidder**

In addition to the mandatory insurance requirements listed in Subsection 3.25 (Insurance Requirements) and at the request of FW, the apparent low bidder shall submit a list of all insurance claims made against it within the past 12 months. Failure to include this information within ten calendar days of request by FW may result in rejection of your bid.

### **5.26 Rider Clause**

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

### **5.27 Incorporation by Reference**

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

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

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### 6. CONTRACT TERM AND CONDITIONS

#### 6.1 Term of Contract and Contract Renewal

- A. The Contract period shall cover the period from October 16, 2020 through October 15, 2021, or an equivalent period depending on the date of Contract award.
- B. The Contractor agrees that for unit price contracts, prices shall remain firm for 365 days except asphalt pricing as indicated in 6.1.D below. If the price is increased after 365 days, the unit price may be increased only upon approval of a written request to the Purchasing Manager. Upon receipt of the Contractor's request, FW shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor.
- C. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and (3) the amount of the change requested with documentation to support the requested adjustment (i.e. appropriate Bureau of Labor Statistics index, change in manufacturer's price, etc.).
- D. Liquid Asphalt Price Adjustment
  - 1. Due to the fluctuations in liquid asphalt prices, price adjustments (Increases and Decreases) for asphalt cement products provided under the Contract will be allowed. Current VDOT cost per ton for liquid asphalt PG-2264 is Price/Imperial Ton recorded February 2020. This cost will become the Base Index for determining any future price adjustments. The Price Adjustment Indices for Asphalt for liquid asphalt PG-2264 and PG7022 are posted on the VDOT website ([www.virginiadot.org/business/const/indices-asphalt.asp](http://www.virginiadot.org/business/const/indices-asphalt.asp)) under Price and Fuel Adjustment indexes.
  - 2. The difference between the index of February 2020 (Time of Contract Award) and the current index (current being - index published by VDOT at the time material is provided to the Fairfax Water) will determine the amount of the adjustment increase/decrease). However, price adjustments will not be made for any item in which the difference between the base and current indexes is less than five percent (5%). The quantity of asphalt cement in the performance grade mix to which the adjustment will be applied will be the quantity utilized in the price adjustment items based on the percent of asphalt in the performance grade mix shown on the appropriate approved job mix formula. The determination as to the amount of any cost adjustment shall be made by Fairfax Water Project Manager. Disputes shall be resolved by Fairfax Water Procurement Manager.
  - 3. Formula to convert tons to square yards for FW Pricing Schedule:

To determine the weight of material, multiply the volume by the density of material:

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Weight = Volume x Density

Assuming a HMA density of 145 pounds per cubic foot (pcf) and a thickness of 4" we would perform the following calculations.

(1) Volume = 17,257 sq. ft. x (4" divided by 12"/ft) = 5,752 cu. ft.

*(notice that the thickness was converted from inches to feet)*

(2) Weight = 5,752 cu. ft. x 145 pcf = 834,040 lbs.

(3) Convert to tons = 834,040 lbs. divided by 2,000 lbs./ton = 417 tons

4. As published at the NAPA - National Asphalt Pavement Association website:

[http://www.asphaltpavement.org/index.php?option=com\\_content&view=article&id=144:how-to-determine-quantities&catid=196:uncategorised&Itemid=227](http://www.asphaltpavement.org/index.php?option=com_content&view=article&id=144:how-to-determine-quantities&catid=196:uncategorised&Itemid=227)

(1) Area sq. ft. x sq. yd/9 sq. ft = Area in sq. yd.

(2) Volume = area sq. ft. x (thickness in inches divided by 12"/ft.) = cu. ft.

(3) Weight = area cu. ft. x 145 pcf = weight in lbs.

(4) Convert to tons = weight in lbs. divided by 2,000 lbs./ton = Weight in tons

### 6.2 Additional Quantities

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

### 6.3 Anti-Discrimination

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

A. During the performance of the contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

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

### **6.4 Antitrust**

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

### **6.5 Assignment of Interest**

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

### **6.6 Availability of Funds**

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

### **6.7 Bid Security**

- A. Each bid shall be accompanied by a bid bond in an amount not less than five percent (5%) of the amount of the bid on the form prescribed herein. The bid bond shall be issued by a surety company licensed to conduct business as a surety in the Commonwealth of Virginia and otherwise satisfying any further requirements with respect to sureties set forth in the General Conditions. In lieu of a bid bond, a bidder may submit a certified check or cash escrow in the face amount required for the bond. Such bid security shall be given as a guarantee that the bidder will enter into a contract and provide the required contract security and insurance if awarded the work.
- B. The bid security of the unsuccessful bidders will be returned within 5 days after the execution of the Contract or, if no such Contract has been executed, within 90 days after the date of opening Bids. The bid security of the successful bidder will be returned only after such bidder has duly executed the Agreement and furnished the contract security and evidence of insurance.
- C. Bids shall be firm and irrevocable for 90 days after the date fixed for opening the Bids.
- D. If the bidder to whom the Contract is awarded refuses or neglects to execute the Agreement or fails to furnish the required contract security and evidence of insurance within 10 days after receipt of the notice, the amount of his bid security shall be forfeited and shall be retained by Fairfax Water as liquidated damages, and not as a penalty, since said sum is a fair estimate of the amount of damages that Fairfax Water will sustain in case said bidder fails to enter into a Contract and furnish the required Performance and Payment Bonds and Insurance. Notwithstanding the foregoing, no forfeiture under a bid bond shall exceed the lesser of: (i) the difference between the bid for which the bond was written and the next low bid; or (ii) the face amount of the bid bond.

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If the bidder to whom the Contract is awarded refuses or neglects to execute it or fails to furnish the required Performance and Payment Bonds and Insurance as herein provided, the award of the Contract may be annulled and the Contract awarded to the next best bidder and such bidder shall fulfill every stipulation of these documents as if he were the original party to whom it was made; or Fairfax Water may reject all of the Bids as its interest may require. Except as provided herein with regard to withdrawal of bids, no plea of mistake in the Bid shall be available to the bidder for the recovery of his bid security or as a defense to any action based upon the neglect or refusal to execute a contract.

### **6.8 Contract Security**

- A. The bidder whose Bid is accepted shall enter into a written contract for the performance of the Work and furnish within 10 days after written notice of award by Fairfax Water has been delivered to such bidder at the address given on his Bid Form the following: (1) a performance bond in an amount equal to 100 percent of the contract sum conditioned on the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract, (2) a payment bond in an amount equal to 100 percent of the contract sum, conditioned upon the prompt and faithful payment of all persons and entities who have and fulfill contracts which are directly with the contractor for performing labor or furnishing materials in the prosecution of the work provided for in the contract, and (3) one or more certificates of insurance evidencing the types and amounts of insurance coverage required to be maintained by the contractor under the Contract Documents.
- B. Any performance or payment bond required hereunder shall be in the form included in these Contract Documents and shall be executed by a surety company legally authorized to do business as a surety in the Commonwealth of Virginia and meeting the requirements stated in Article 12 of the General Conditions. In lieu of a payment or performance bond, the successful bidder may furnish a cash escrow or certified check payable to the order of Fairfax Water in the face amount required for such bonds.

### **6.9 Brand Names**

In the case of bids specifying brand names or models:

- A. Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that FW, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. Each Bidder is responsible to clearly identify the product being offered (by manufacturer's name, model, part number, etc.) and to provide sufficient descriptive literature, catalog cuts and technical detail to enable FW to determine if the product offered meets the requirements of the solicitation. Failure to furnish adequate data for evaluation purposes may result in declaring an offer non-responsive. Unless the Bidder clearly indicates that the product offered is an "equal" product, such bid will be considered to offer the brand name product specified in this solicitation.
- B. For purposes of this solicitation and any contract that may result here from, FW's designation of any one or more manufacturers and/or suppliers as "preapproved" or "acceptable" shall signify only

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that such manufacturers and/or suppliers previously have submitted work samples or the like to FW which satisfied FW's requirements. FW's designation of any one or more manufacturers and/or suppliers as "preapproved" or "acceptable" shall in no event be deemed or construed to be a representation or warranty on the part of FW of any such manufacturer's or supplier's capability or capacity (in terms of financial wherewithal, personnel and equipment availability, managerial ability or otherwise) of performing any of the requirements of this solicitation in accordance with the terms and conditions hereof. Each Bidder shall conduct such independent investigation into the qualifications, experience and abilities of its selected manufacturers and suppliers as it deems appropriate under the circumstances.

### **6.10 Cancellation**

FW may cancel this solicitation at any time and for any reason prior to contract award.

### **6.11 Contract Changes/ Change Orders**

- A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from this solicitation or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in the solicitation, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the purchasing contact identified on the cover page. Contract changes shall be in writing and shall be on official FW Purchasing Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Project Manager.
- B. Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price

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under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

### **6.12 Contractor's Responsibilities**

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

### **6.13 Delivery**

In the case of solicitations that require delivery to FW:

- A. By submitting a bid in response to this solicitation, the Bidder guarantees delivery of contract items within the timeframe specified herein or as indicated in the bidders bid submission form. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of contract and may be grounds for a declaration of default in addition to any other remedies FW may be entitled to.
- B. Deliveries must be made by within the delivery time specified in the bid submission document. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.
- C. Homeland Security Advisory System: If the Homeland Security Advisor System places the water/waste water industry in Codes Orange or Red, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor's yard, the Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor's risk and expense.

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### **6.14 Ethics in Public Contracting**

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

### **6.15 Examination of Records**

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

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

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

### **6.17 No Waiver or Estoppel**

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

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### 6.18 Partial Invalidity

Neither any payment for, nor acceptance of, the whole or any part of the services by FW, nor any extension of time, shall operate as a waiver of any provision of any Contract resulting from this IFB, nor of any power herein reserved to FW, or any right to damages herein provided, nor shall any waiver of any breach of any Contract be held to be a waiver of any other or subsequent breach. Failure of FW to require compliance with any term or condition of any Contract shall not be deemed a waiver of such term or condition or a waiver of the subsequent enforcement thereof.

### 6.19 Payment Clauses Required in All Contracts

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

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

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### **6.20 Price Firm Period**

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

### **6.21 Price and Title**

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

### **6.22 Purchase and Sale Transaction**

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

### **6.23 Taxes**

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

### **6.24 Virginia Freedom of Information Act**

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

### **6.25 Faith-Based Organizations**

FW does not discriminate against faith-based organizations.

### **6.26 Immigration Reform and Control Act of 1986**

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

### **6.27 Severability**

In the event that any provision shall be adjudged or decreed to be invalid by a court of competent jurisdiction, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

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### 6.28 Notices

All notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO CONTRACTOR:**

**TO FW:**

Notice is deemed to have been received: (i) on the date of delivery if delivered in person; (ii) on the first business day after the date of delivery if sent by same day or overnight courier service; or (iii) on the third business day after the date of mailing, if sent by certified or registered United States Mail, return receipt requested, postage and charges prepaid.

### 6.29 Licensure

To the extent required by the Commonwealth of Virginia (*see e.g.* 54.1-1100 *et seq.* of the Code of Virginia) or FW, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.

### 6.30 Authority to Transact Business in Virginia

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with FW pursuant to the Virginia Public Procurement Act 2.2-4300 *et seq.* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. FW may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

### 6.31 Employment Discrimination by Contractor Prohibited; Required Contract Provisions\*

The following provision is required to be in every contract of more than \$10,000 (Virginia Public Procurement Act, § 2.2-4311)

A. During the performance of any ensuing contract, the Contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

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2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

### **6.32 Counterparts**

This Contract and any amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Contract or any amendment or renewal. A signature by any party to this Contract provided by facsimile or electronic mail is binding upon that party as if it were the original.

### **6.33 Force Majeure**

A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the contracted for works but excluding any industrial dispute which is specific to the performance of the works or this Contract, interruption or failure of electricity or telephone service.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, that party must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract.

An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

The Contractor has no entitlement and FW has no liability for: (1) any costs, losses, expenses, damages or the payment of any part of the contract price during an event of force majeure; and (2) any delay costs in any way incurred by the contractor due to an event of force majeure.

### **6.34 Survival of Terms**

Upon discharge of this Agreement, Sections (Notice, Hold Harmless, Warranties, Governing Law/Forum, Contractual Disputes) of these Terms and Conditions continue and survive in full force and effect.

## **IFB #20-050 – Pavement Restoration**

### **6.35 Non-Waiver**

No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of this Agreement constitute a continuing waiver unless otherwise expressly provided.

### **6.36 Priority Customer**

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

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**ATTACHMENT 1**

**BID SUBMISSION FORM**

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

FAX: \_\_\_\_\_ FED ID #: \_\_\_\_\_

Pursuant to Title 13.1 or Title 50 of the Virginia Code provide the identification number issued to your firm by the Virginia State Corporation Commission (VSCC) in the space provided below, If your firm is not required to be authorized to transact business under Title 12.1 or Title 50, or any other law; provide a statement why your firm is not required to be so authorized.

\_\_\_\_\_  
Company Name Identification Number

If you do not have a VSCC identification number, explain why it is not required in the space below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- **TERMS:** All bids will be interpreted as 2%-30, Net 31, unless otherwise specified herein. FW's minimum payment term is Net 31 days. By submitting an offer to sell in response to this solicitation, all bidders acknowledge and agree to this requirement.

By my signature I certify that I am acting as an agent or in the case of an LLP, the Partner or Managing Partner for the firm identified below and I am fully authorized to bind the firm to the terms, conditions and specifications of this solicitation, as well as any addenda thereto.

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

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Notice to Bidders: Payment shall be made as detailed in Section 01200, Section 1.04.A.2

Bid Item	Description	Quantity	Unit of Measure	Unit Cost	Total Cost
1	2" Asphalt Concrete Surface Course Pavement Removal and Replacement	4,500	SY		
2	4" Asphalt Concrete Surface Course Pavement Removal and Replacement	100	SY		
3	6" Asphalt Concrete Surface Course Pavement Removal and Replacement	4,500	SY		
4	8" Asphalt Concrete Surface Course Pavement Removal and Replacement	18,000	SY		
5	10" Asphalt Concrete Surface Course Pavement Removal and Replacement	6,000	SY		
6	12" Asphalt Concrete Surface Course Pavement Removal and Replacement	2,000	SY		
7	Additional Asphalt Concrete Surface Course Pavement Greater than 12"	350	SY-IN		
8	Additional Asphalt Concrete Surface Course Pavement Overlay	1,000	SY-IN		
9	Additional Pavement Milling of Existing Surfaces	3,000	SY-IN		
10	Pavement Line Markings (VDOT Approved Paint)	1500	LF		
11	Pavement Line Markings (VDOT Approved Thermoplastic)	500	LF		
12	Concrete Sidewalk Replacement	350	SY		
13	Concrete Driveway, Curb Cut Ramps and Valley Gutter Replacement	200	SY		
14	Concrete Curb and Gutter Replacement	500	LF		
15	4" Asphalt Concrete Base Course Pavement	500	SY		
16	6" Asphalt Concrete Base Course Pavement	1000	SY		
17	8" Asphalt Concrete Base Course Pavement	1500	SY		
18	10" Asphalt Concrete Base Course Pavement	200	SY		
19	21-A Stone	25	TON		
20	Total Cost Items 1-19				

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**ATTACHMENT 2**

**REFERENCES**

BIDDER'S NAME: \_\_\_\_\_

1. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

FAX: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

E-MAIL: \_\_\_\_\_

2. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

FAX: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

E-MAIL: \_\_\_\_\_

3. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

FAX: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

E-MAIL: \_\_\_\_\_

**IFB #20-050 – Pavement Restoration**

BIDDERS' NAME: \_\_\_\_\_

4. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

FAX: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

E-MAIL: \_\_\_\_\_

5. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

FAX: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

E-MAIL: \_\_\_\_\_

**IFB #20-050 – Pavement Restoration**

**SECTION 00430**

**IFB 20-050**

**PAVEMENT RESTORATION**

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called the “Principal”), and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in \_\_\_\_\_, and authorized to do business in the Commonwealth of Virginia as a surety (hereinafter called the “Surety”), are held and firmly bound unto FAIRFAX COUNTY WATER AUTHORITY (hereinafter called the “Obligee”) in the full and just sum which is equal to 5% of the total amount of the Principal’s Bid (as that term is defined below), as submitted to the Obligee (such total amount referred to herein as the “Total Bid”), in good and lawful money of the United States of America, to be paid upon demand of the Obligee, for the payment of such sum well and truly to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally and firmly by these presents. The Total Bid is the aggregate amount (including amounts set forth with respect to any and all Alternates) set forth on the Principal’s Bid Form for performance of the work described below, as submitted to and maintained by the Obligee (such Bid Form referred to herein as the “Bid”). The Surety hereby acknowledges and agrees that the Bid shall be deemed to be incorporated by reference in this Bid Bond to the same extent as if set forth fully herein.

WHEREAS, the Principal intends to submit, or has submitted to the Obligee, a Bid for the Principal to perform work for the Obligee, designated as:

**PAVEMENT RESTORATION**

(hereinafter called the “Project”) and,

WHEREAS, the Principal desires to provide this Bid Bond in lieu of a certified check or cash escrow otherwise required to accompany the Principal’s Bid.

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH THAT, if the Bid be accepted by the Obligee, and if the Principal shall, within ten days after the date of receipt of a written Notice of Award from the Obligee or any agency or department thereof, (i) execute a Contract in accordance with the Bid and upon the terms, conditions and price set forth therein, in the form and manner required by the Obligee, (ii) execute a sufficient and satisfactory Performance Bond in the amount of 100% of the total Contract Sum and a sufficient and satisfactory Payment Bond in the amount of 100% of the total Contract Sum, each payable to the Obligee, in a form and with a surety satisfactory to the Obligee, and (iii) provide the Obligee with copies of all required insurance policies, then this obligation is to be void; otherwise this obligation shall be and remain in full force and in the event of the failure of any or all of the foregoing requirements to be satisfied within the time period specified above, the Principal immediately shall pay to the Obligee, upon demand, the lesser of: (a) the amount hereof and (b) the difference between the Bid and the next low bid for the Project, in each case in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

Based upon the Surety’s present knowledge and information, the Surety knows of no reason why it would not issue payment and performance bonds on behalf of the Principal for the above-referenced

**IFB #20-050 – Pavement Restoration**

Project. The foregoing statement shall not be construed as a commitment on the part of the Surety to issue either or both of such bonds on behalf of the Principal.

All notices, requests, demands and other communications which are provided hereunder, shall be in writing and shall be deemed to have been duly given upon the hand delivery thereof during business hours, or upon the earlier of receipt or three (3) days after posting by registered mail or certified mail, return receipt requested, or on the next business day following delivery to a reliable overnight delivery service, if to the Principal or the Oblige, to the addresses set forth in the Bid, and if to the Surety, to the address set forth beneath its signature.

Unless the context otherwise requires, capitalized terms not otherwise defined in this Bond shall have the meanings assigned to them in the Contract Documents. This Bond shall be deemed to incorporate all provisions required by law to be set forth herein.

IN WITNESS WHEREOF, the Principal and Surety have caused this Bid Bond to be executed by their duly authorized officers effective as of the \_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

\_\_\_\_\_  
Principal

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(Seal)

\_\_\_\_\_  
Surety

By: \_\_\_\_\_,  
Attorney-in-Fact (Attach  
Copy of Power of Attorney)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

END OF BID BOND

**IFB #20-050 – Pavement Restoration**

**SECTION 00610**

**IFB 20-050**

**PAVEMENT RESTORATION**

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_  
of \_\_\_\_\_ (hereinafter called the “Principal”), and \_\_\_\_\_,  
a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal  
office in the City of \_\_\_\_\_, and authorized to transact business in the Commonwealth of  
Virginia as a surety (hereinafter called the “Surety”) are held and firmly bound unto FAIRFAX COUNTY  
WATER AUTHORITY (hereinafter called the “Obligee”) in the sum of  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_), lawful money of the United  
States of America, for the payment of which well and truly to be made, the Principal and the Surety  
hereby bind themselves and their successors and permitted assigns, jointly and severally and firmly by  
these presents, to perform all of the Work in accordance with the requirements of the Contract Documents  
for the Project.

WHEREAS, the Principal has entered into a certain written agreement with the Obligee, dated as of the  
\_\_\_ day of \_\_\_\_\_, 20 \_\_, (hereinafter called the “Contract”), for

**PAVEMENT RESTORATION**

which Contract is incorporated herein by reference;

WHEREAS, the Principal is obligated to furnish security with respect to its obligation to perform the  
work to be performed under the Contract; and

WHEREAS, the Principal desires to furnish this Performance Bond in lieu of a certified check or cash  
escrow otherwise required to be provided to the Obligee.

NOW, THEREFORE, THE CONDITIONS OF THE ABOVE OBLIGATIONS ARE SUCH THAT, if  
the Principal and Surety and its or their successors or assigns, or any of them shall:

## **IFB #20-050 – Pavement Restoration**

Well and truly and in good sufficient and workmanlike manner perform or cause to be performed the Contract, and each and every of the covenants, promises, agreements, warranties, and provisions to be performed by the Principal set forth therein, in strict conformity with the plans and specifications, and complete the same within the time period specified therein, all as may be amended from time to time by the parties thereto, and fully indemnify and save harmless the Obligee from all costs and damages which it may suffer by reason of the Principal's failure to do so and fully reimburse and repay the Obligee all costs and expenses which it may incur in making good any such default, then these obligations shall be null and void, otherwise they shall remain in full force and effect.

The obligations evidenced hereby shall constitute the joint and several obligations of the Principal and the Surety and their successors, and permitted assigns.

PROVIDED, HOWEVER, that this bond is subject to the following conditions and limitations:

- (a) In no event shall the Surety, or its successors or assigns be liable for a greater sum than the penalty of this bond.
- (b) No action on this bond shall be brought unless within one year after (i) completion of the Contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such, in all other cases.

The Surety, for value received, on behalf of itself and its successors and assigns, hereby stipulates and agrees that the obligations of the Surety or its successors and assigns under this bond shall not in any manner be impaired or affected by (a) any extension of time, modification, omission, addition or amendment of or to the Contract or the work to be performed thereunder; (b) any payment thereunder before the time required therein; (c) any waiver of any provision thereof; or (d) any assignment, subletting or other transfer of all or of any part thereof or of any work to be performed or of any moneys due or to become due thereunder; and the Surety, for itself and its successors and assigns, does hereby waive any right to receive notice of any and all of such extensions, modifications, omissions, additions, amendments, payments, waivers, assignments, subcontracts and transfers.

The Surety hereby stipulates and agrees that in the event that the Obligee declares the Principal to be in default the Surety will promptly, at the Obligee's election: (a) perform and complete the work to be performed under the Contract in accordance with the terms, conditions and covenants set forth therein with a duly licensed and qualified contractor designated by Obligee; (b) obtain bids from duly licensed and qualified contractors for completing the work to be performed under the Contract in accordance with the terms, conditions and covenants set forth therein and, upon determination by the Obligee and the Surety of the lowest responsive and responsible bidder, (i) arrange for a contract between such bidder and the Obligee and (ii) make funds available to the Obligee to pay the costs of completion less the balance of the contract sum as such may have been adjusted by change order (such amount, including other costs and damages for which the Surety may be liable hereunder, not to exceed the penal sum set forth in the first paragraph hereof); or (c) remedy the default. The Surety further stipulates and agrees that, within 60 days after its receipt of written notice from the Obligee specifying the Obligee's election of (a), (b) or (c) above, the Surety shall have resumed performance of the Work or shall have caused the performance of the Work to have been resumed, in accordance with the Obligee's election. In the event the Surety fails to resume the Work within such 60- day period, the Obligee may elect to perform or arrange for the performance of the Work at the sole cost and expense of the Surety in addition to any other rights and remedies available to Obligee. As employed herein, the phrases (i) "balance of the contract sum" shall mean the total amount payable by the Obligee to the Principal under the Contract after all proper adjustments have been made, less the aggregate of all amounts previously paid by the Obligee to the Principal thereunder; and (ii) **"resume the Work" shall mean the commencement and diligent performance of actual work activities at the site, as demonstrated by discernable daily progress at**

**IFB #20-050 – Pavement Restoration**

**the rate contemplated by the Contract.** All payments to be made by the Surety hereunder shall be paid within thirty (30) days after the Surety's receipt of a request or demand therefor.

The Surety shall not be liable to the Obligee or others for obligations of the Principal that are unrelated to the Contract, and the balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligation. No right of action shall accrue on this Bond to any person or entity other than the Obligee or its successors.

The Obligee's omission to call upon the Surety in any instance shall in no event release the Surety from any obligation hereunder.

All notices, requests, demands and other communications which are provided hereunder, shall be in writing and shall be deemed to have been duly given upon the hand delivery thereof during business hours, or upon the earlier of receipt or three (3) days after pre-paid posting by registered mail or certified mail, return receipt requested, or on the next business day following pre-paid delivery to a reliable overnight delivery service, if to the Principal or the Obligee, to the addresses set forth in the Contract, and if to the Surety, to the address set forth beneath its signature on this Bond.

The obligations evidenced hereby shall constitute the joint and several obligations of the Contractor, the Surety, and their successors and permitted assigns.

Unless the context otherwise requires, capitalized terms not otherwise defined in this Bond shall have the meanings assigned to them in the Contract Documents. This Bond shall be deemed to incorporate all provisions required by law to be set forth herein.

IN WITNESS WHEREOF, the Principal and Surety have caused this Performance Bond to be executed by their duly authorized officers effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Principal

(SEAL)

By:

\_\_\_\_\_

Name:

\_\_\_\_\_

Title:

\_\_\_\_\_

\_\_\_\_\_  
Surety

(Seal)

By:

\_\_\_\_\_

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Name:

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Title:

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Address of Surety:

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(If executed by Attorney-in-Fact, attach copy of Power of Attorney)

**END OF PERFORMANCE BOND**

**IFB #20-050 – Pavement Restoration**

**SECTION 00611**

**IFB 20-050**

**PAVEMENT RESTORATION**

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS, that we,

\_\_\_\_\_ of \_\_\_\_\_ (hereinafter called the "Principal"), and the \_\_\_\_\_, a corporation created and existing under the laws of the State of \_\_\_\_\_ and having its principal office in the City of \_\_\_\_\_, and authorized to transact business in the Commonwealth of Virginia as Surety (hereinafter called the "Surety") are held and firmly bound unto FAIRFAX COUNTY WATER AUTHORITY (hereinafter called the "Obligee") in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which well and truly to be made, the said Principal and Surety hereby bind themselves and their successors and permitted assigns, all jointly and severally, firmly by these presents, to pay for all labor performed and material furnished in accordance with the Contract Documents for the Project.

WHEREAS, said Principal has entered into a certain written agreement with Obligee, dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (hereinafter called the "Contract"), for

**PAVEMENT RESTORATION**

which Contract is incorporated herein by reference.

WHEREAS, the Principal is obligated to furnish security with respect to its obligation to pay for all labor performed and material furnished pursuant to the Contract; and

WHEREAS, the Principal desires to furnish this Payment Bond in lieu of a certified check or cash escrow otherwise required to be provided to the Obligee.

## **IFB #20-050 – Pavement Restoration**

NOW THEREFORE THE CONDITIONS OF THE ABOVE OBLIGATIONS ARE SUCH THAT, if the Principal, the Surety and its or their successors or permitted assigns, or any or either of them shall:

Pay or cause to be paid the wages and compensation for labor performed and services rendered of all persons engaged in the prosecution of the work provided for therein, whether such persons be agents, servants or employees of the Principal, and of its successors or assigns, or any subcontractor of any assignee thereof, including all persons so engaged who perform the work of laborers or of mechanics regardless of any contractual relationship between the Principal, or its assigns, or any subcontractor or any assignee thereof, and such laborers or mechanics but not including office employees not regularly stationed at the site of the work, and further, shall pay or cause to be paid all lawful claims of subcontractors and of material men and other third persons arising out of or in connection with said contract and the work, labor, services, supplies and materials furnished in and about the performance and completion thereof, then these obligations shall be null and void; otherwise they shall remain in full force and effect.

PROVIDED, however, that this bond is subject to the following conditions and limitations:

- (a) All persons who have performed or rendered services, as aforesaid, all subcontractors, and all persons, firms, corporations, including materialmen and third persons, as aforesaid, furnishing work, labor, services, supplies and material under or in connection with the Contract or in or about the performance and completion thereof, shall have a direct right of action (subject to the prior right of the Obligee under any claim which it may assert against the Principal and its successors, and assigns and/or the Surety and its successors and assigns) against the Principal and its successors, and assigns and/or the Surety and its successors and assigns on this bond, which right of action shall be asserted in proceedings instituted in the State in which such work, labor, services, supplies or material was performed, rendered or furnished, or where work, labor, services, supplies or material has been performed, rendered or furnished, as aforesaid, in more than one State, then in any such State. Insofar as permitted by the laws of such State, said right of action shall be asserted in a proceeding instituted in the name of the Obligee to the use and benefit of the person, firm or corporation instituting such action and of all other persons, firms and corporations having claims hereunder, and any other person, firm or corporation having a claim hereunder shall have the right to be made a party to such proceedings (but not later than one year after the performance of the Contract including the expiration of any warranty or guarantee) and to have such claim adjudicated in such action and judgment tendered thereof. Prior to the institution of such a proceeding by a person, firm or corporation in the name of the Obligee, as aforesaid, such person, firm or corporation shall furnish the Obligee with a bond of indemnity for costs, which bond shall be in an amount satisfactory to the Obligee.
- (b) The Surety or its successors or assigns shall not be liable hereunder for any damages or compensation recoverable under any worker's compensation or employer's liability statute.
- (c) In no event shall the Surety, or its successors or assigns be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted by any person, firm or corporation under the provisions of the above section(s), later than one year after such person last performed labor or last furnished or supplied materials.

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The Principal, for itself and its successors and assigns, and the Surety, for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of the Obligee to require a bond containing the foregoing provision, and they do hereby further expressly waive any defense which they or either of them might interpose to an action brought here on by any person, firm, or corporation, including subcontractors, materialmen and third persons, for work, labor services, supplies or material, performed, rendered or furnished as aforesaid, upon the ground that there is no law authorizing the said Obligee to require the foregoing provision to be placed in this bond.

And the Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligations of said Surety and of its successors and assigns, and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the said contract or the work to be performed thereunder or by any payment thereunder before the time required therein, or by any waiver of any provision thereof, or by any assignment, subletting or other transfer thereof, or of any part thereof, or of any work to be performed or of any moneys due or to become due thereunder; and the said Surety, for itself and its successors and assigns, does hereby waive notice of any and all of such extensions, modifications omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby stipulates and agrees that any and all things done and omitted to be done by and in relation to executors, administrators, successors, assignees, subcontractors, and other transferees, shall have the same effect as said Surety and its successors and assigns, as though done or omitted to be done by and in relation to said Principal.

Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Principal shall promptly furnish a copy of this Bond or shall permit a copy to be made on behalf of such potential beneficiary.

The obligations evidenced hereby shall constitute the joint and several obligations of the Contractor, the Surety, and their successors, and permitted assigns.

Unless the context otherwise requires, capitalized terms not otherwise defined in this Bond shall have the meanings assigned to them in the Contract Documents. This Bond shall be deemed to incorporate all provisions required by law to be set forth herein.

IN WITNESS WHEREOF, the Principal and Surety have caused this Bond to be executed by their duly-authorized representatives effective as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Principal

By:

\_\_\_\_\_

Name: \_\_\_\_\_

Title:

\_\_\_\_\_

\_\_\_\_\_

Surety

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By:

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Name:

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Title:

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Address of Surety:

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(If executed by Attorney-in-Fact, attach copy of Power of Attorney)

END OF PAYMENT BOND

**IFB #20-050 – Pavement Restoration**

**SECTION 00700**

**GENERAL CONDITIONS**

ARTICLE 1	DEFINITIONS
ARTICLE 2	CONTRACTOR'S RESPONSIBILITY
ARTICLE 3	THE CONTRACT
ARTICLE 4	CONFORMANCE WITH CONTRACT DOCUMENTS
ARTICLE 5	ROYALTIES AND PATENTS
ARTICLE 6	PROTECTION OF PERSONS AND PROPERTY
ARTICLE 7	CHANGES IN THE WORK; RECORDS
ARTICLE 8	TIME PROVISIONS
ARTICLE 9	CONTRACTOR'S DEFAULT AND TERMINATION
ARTICLE 10	PAYMENT
ARTICLE 11	INSURANCE
ARTICLE 12	CONTRACT SECURITY
ARTICLE 13	SUBCONTRACTS AND ASSIGNMENTS
ARTICLE 14	INDEMNIFICATION
ARTICLE 15	POWERS OF FAIRFAX WATER'S REPRESENTATIVES
ARTICLE 16	BOUNDARIES
ARTICLE 17	WARRANTIES
ARTICLE 18	APPLICABLE LAW
ARTICLE 19	NON-DISCRIMINATION
ARTICLE 20	CONTRACTOR'S EMPLOYEES AND DRUG FREE WORKPLACE
ARTICLE 21	FREIGHT CLAIMS
ARTICLE 22	TAX EXEMPTION

## **IFB #20-050 – Pavement Restoration**

### **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, Measurement and Payment) 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.

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"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.

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"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.

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"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

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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.

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### 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

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- 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.

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### **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

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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

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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

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- 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

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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.

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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

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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.

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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. Refer to Section 00500 Agreement Form for definition of Beneficial Use as applicable to project.
  - c. 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.
  - d. 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 Agreement Form (Section 00500) is reasonably in proportion to the probable loss to Fairfax Water and that amount per day is hereby agreed upon as the liquidated damages for each and every day that the time consumed in completing the Work exceeds the time allowed.
2. This amount shall in no event be considered as a penalty or otherwise than as the liquidated and adjusted damages to Fairfax Water because of the delay, and the Contractor and his Surety hereby agree that the stated sum per day for each such day of delay shall be deducted and retained out of the monies which may become due hereunder and if not so deducted, the Contractor and his Surety shall be liable therefore. The Contractor and his Surety hereby waive any defense as to the validity of any liquidated damages stated herein as they may

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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

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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.

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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.

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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.

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### **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

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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

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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.

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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. A separate estimate must be sent to each maintenance yard outlining the work completed that had been authorized by that maintenance yard. 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 authorize payment 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,

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- 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

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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

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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.

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### 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

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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

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- 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

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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 here from 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.

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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.

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- 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.

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- 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.

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- 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

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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

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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.

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- 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

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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.

END OF SECTION 00700

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**SECTION 00800**  
**SUPPLEMENTARY CONDITIONS**

**PART 1 – GENERAL**

**1.01 SECTION INCLUDES**

- A. Related Requirements
- B. Supplements

**1.02 RELATED REQUIREMENTS**

- A. The following supplements modify, delete from, or add to the General Conditions (Section 00700) of these contract documents.
- B. Unless Articles of the General Conditions are modified by these Supplemental Conditions, unaltered Articles remain in effect.

**1.03 SUPPLEMENTS**

- A. Under Article 7, Part 7.B (Extra Work) shall not apply to this Contract.
- B. Article 8 (Time provisions) shall not apply to this Contract.
- C. All Work performed under this Contract must be initiated with a written notification from a Fairfax Water representative indicating the location of the work, and restoration size and made a part of this contract. Fairfax Water maintains three (3) distribution system maintenance yards with each yard responsible for certain areas within Fairfax County. Each yard will be responsible for the notification of Work within their respective areas.

END OF SECTION 00800

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## SECTION 01110

### SUMMARY OF WORK

#### PART 1 - GENERAL

##### 1.01 SECTION INCLUDES

- 1.01 Description of Work
- 1.02 Intent of Contract Documents
- 1.03 Copies of Contract Documents Furnished to Contractor
- 1.04 Coordination
- 1.05 Coordination with other Contractors
- 1.06 Satisfactory Completion of Work
- 1.07 Priority/Emergency Repairs

##### 1.02 DESCRIPTION OF WORK

- A. Project Scope: All Work specified within this Contract may occur anywhere within Fairfax County or the independent Cities or Towns within the County. Work included in this Contract will be authorized by Fairfax Water under separately identified notifications at various times during the term of this Contract. The Work includes but is not limited to the following: the restoration of pavement sections, curb and gutter, sidewalk, valve boxes, curb boxes and other improvements that are generally associated with roadway infrastructure. Contractor shall furnish all labor, materials and equipment necessary to install new asphalt paving and remove off-site all excavated materials. Installation of asphalt paving shall include prime coat on stone base or tack coat on existing paving. The contractor shall provide all work necessary to insure all materials adjacent to the new construction edges shall be neat and conform to the type materials existing prior to construction. All material depths referred to in this document shall be after the material is fully compacted. Paving work shall fully conform with all applicable Virginia Department of Transportation (VDOT) standards (including highway permits and subsequent special provisions). Contractor shall furnish all labor, materials and equipment necessary to clean, prepare and apply materials to existing asphalt surfaces as specified in Section 02700 of this Contract Document.
- B. A typical asphalt patch shall require, but not be limited to, the following:
  - 1. Cut and remove all asphalt within area to be repaired (patched).
  - 2. Install sub-base material as required, roll and compact with vibratory equipment.
  - 3. Tack all vertical edges with coal tar tack.
  - 4. Install asphalt as required to bring up to existing pavement elevation; roll and compact.
  - 5. Apply liquid asphalt around perimeter of asphalt patch for protection.
  - 6. Apply sand around outside perimeter of liquid asphalt to prevent vehicle tracking.
  - 7. Fill all drill holes with liquid asphalt as required.
- C. Work Included: Contractor shall furnish labor, superintendence, materials, plant, power, light, heat, fuel, water, tools, appliances, equipment, supplies, and other means of construction necessary or proper for performing and completing the Work. He shall obtain and pay for all required permits

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except the VDOT Permit, which will be obtained by Fairfax Water. He shall protect the Work during construction. He shall perform and complete the Work consistent with safety of life and property and in strict accordance with the Contract Documents. Contractor shall clean up the Work and shall maintain it during and after construction and shall do all Work and pay all incidental costs during and after construction. He shall repair, restore and clean, structures and property that may be damaged or disturbed during the performance of the Work.

- D. Contractor's Plant and Equipment: The Contractor shall be solely responsible for the adequacy of his plant and equipment.

### **1.03 CONTRACTOR'S USE OF SITE AND PREMISES**

- A. Unfavorable Construction Conditions: During unfavorable weather, wet ground, or other unsuitable construction conditions, the Contractor shall confine his operations to Work which will not be affected adversely by such conditions. No portion of the Work shall be constructed under conditions which would adversely affect the quality or efficiency thereof, unless special means or precautions are taken by the Contractor to perform the Work in a proper and satisfactory manner. The Contractor shall, however, maintain suitable all-weather access to all portions of the Work Site.
- B. Site Administration: The Contractor shall be responsible for all areas of the Site used by him and all subcontractors in the performance of the Work. He shall exert full control over the actions of all employees and other persons in the use and preservation of property and existing facilities except such controls as may be specifically reserved to the Owner or others. The Contractor may require all persons on the Site to observe the same regulations as he requires of his employees and representatives. Fairfax Water's employees or Authorized Representatives will not be subject to the provisions of this paragraph.

### **1.04 INTENT OF CONTRACT DOCUMENTS**

- A. Contract Documents Complementary: All Work called for in the Contract Documents applicable to this Contract, but not shown in the Drawings in their present form or shown in the Drawings and not specifically called for in the Specifications, shall be of like effect as if shown or mentioned in both. Work not specified in either the Drawings or in the Specifications, but involved in carrying out their intent, or in the complete and proper execution of the Work, is required, and shall be performed by the Contractor as though it were specifically delineated or described.
- B. Omission or Silence of Contract Documents: The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be performed or materials to be furnished, shall be regarded as meaning that only the best general practice is to prevail and that only materials and Workmanship of the best quality are to be used and interpretation of these Specifications shall be made upon that basis.

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### 1.05 COORDINATION

- A. Contractor shall verify all dimensions, quantities, equipment, material, finishes, and other such listings or other data received from Fairfax Water, and shall make notification of all errors, omissions, conflicts and discrepancies. This shall not relieve the Contractor of full responsibility for unsatisfactory Work, faulty construction, or improper operation, or from rectifying such conditions at his own expense. He shall not be allowed to take advantage of any errors or omissions. All equipment, materials, finishes, and other such listings are given for the convenience of the Contractor and are not guaranteed to be complete. The Contractor shall assume all responsibility for the making of estimates of the size, kind, and quality of materials and equipment included in Work to be done under the Contract.

### 1.06 COORDINATION WITH OTHER CONTRACTORS

- A. Fairfax Water has the right to employ other contractors at the various Work sites. During the progress of the Work other contractors may be engaged in other work at the sites. In such event, the Contractor shall coordinate the Work to be done hereunder with the work of other Contractors.

### 1.07 SATISFACTORY COMPLETION OF WORK

- A. All Work, whether it be within a highway right-of-way, neighboring jurisdictions, or private easements, shall be completed to the satisfaction of Fairfax Water. It is hereby understood that Fairfax Water shall be the final approving body as to the acceptability of the Work, regardless of prior approval from other jurisdictions.

### 1.08 PRIORITY/EMERGENCY REPAIRS

- A. The Contractor may be required to perform priority/emergency pavement repairs that are necessitated by water main breaks. Emergency repairs shall be performed, weather permitting, as stipulated in Paragraph “B” below. Compensation for emergency repairs will be based on the established unit prices in the “Schedule of Prices” of the bid form. Emergency/priority work shall be defined as any work assigned to the Contractor that is not previously scheduled by the owner. Notification for all emergency/priority work shall be issued for clarification of the type of work to be performed.
- B. The Contractor, after receiving notification:
  - 1. Will have **seven calendar** days to complete asphalt patchwork, except where incidental concrete items are included in the patch area. In such event, the work shall be completed within **10** days, or
  - 2. If deemed an emergency by Fairfax Water, the Contractor will install an “Emergency Hot Patch” within **eight (8) hours** after Fairfax Water completes repairs to the water main.

### PART 2 – PRODUCTS --- Not Used

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**PART 3 – EXECUTION** --- Not Used

END OF SECTION 01110

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## SECTION 01200

### MEASUREMENT AND PAYMENT

#### PART 1 - GENERAL

##### 1.01 SECTION INCLUDES

- 1.02 Measurement Authority
- 1.03 Unit Quantities Specified
- 1.04 Schedule of Unit Price Items

##### 1.02 MEASUREMENT AUTHORITY

- A. Measurement: The Contractor will take all measurements and compute quantities accordingly.
- B. Assistance: Fairfax Water's Authorized Representative shall assist and verify all measurements and computations.

##### 1.03 UNIT QUANTITIES SPECIFIED

- A. Quantities: Quantities and measurements indicated in the Bid Form are for bidding and contract purposes only. Quantities and measurements supplied or placed in the Work, verified by Fairfax Water's Authorized Representative and recorded in his daily report shall determine the payment.
- B. Actual Work: If the actual Work requires more or fewer quantities than those quantities indicated, the required quantities shall be provided at the unit prices contracted. Some items for which unit prices have been requested may not be used during the term of the Contract.
- C. Units of Work: The intention of the unit prices is to provide a complete, functioning unit which may include Work from several Specification Sections. All the Work which is required or which can reasonably be inferred to be required in a unit price item to deliver a complete, functioning unit shall be included.

##### 1.04 SCHEDULE OF UNIT PRICE ITEMS

- A. Permanent Pavement
  - 1. Item Description:
    - a. 2 Inch Asphalt Concrete Surface Course Removal and Replacement
    - b. 4 Inch Asphalt Concrete Surface Course Removal and Replacement.
    - c. 6 Inch Asphalt Concrete Surface Course Removal and Replacement.
    - d. 8 Inch Asphalt Concrete Surface Course Removal and Replacement.
    - e. 10 Inch Asphalt Concrete Surface Course Removal and Replacement.
    - f. 12 Inch Asphalt Concrete Surface Course Removal and Replacement.
    - g. Greater than 12-inch in thickness, Asphalt Concrete Surface Course Removal And Replacement

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- h. Asphalt Concrete Surface Course Pavement Overlay.
- i. Pavement Milling of Existing Surfaces.
- j. Pavement Line Markings.

2. Work Includes:

- a. For Items 1 through 8 of Section 00400 the unit price shall include the full depth removal of the existing asphalt within the area to be repaired.
- b. Furnish and install the required pavement thickness in accordance with the requirements of Section 02700, Paving and Surfacing.
- c. Payment for permanent surface courses shall include all necessary base and sub base courses as specified in Section 02700, or as required by VDOT.
- d. Where removal of asphalt concrete surface course is required, disposal shall be included in the unit price for pavement.
- e. For item 9 Additional Pavement Milling of Existing Surfaces shall be paid for only those areas specifically directed by Fairfax Water.
- f. Disposal of spoils from milling shall be included in the unit price for Item 9 of Section 00400 (Bid Form).

3. Unit of Measure: Square yards of asphalt concrete placed for Items 1 through 7 and 15 through 18. Square yards per inch of asphalt concrete placed for Item 8. Square yards per inch of existing surface planed or milled in preparation for repair or overlay for Item 9. Linear feet for pavement line markings for Item 10 and item 11.

- a. Pavement limits for payment are in accordance with the requirements of Section 02700 or as required by VDOT.

4. No payment will be made for pavement placed beyond the limits specified or shown.

### **B. Concrete Sidewalk, Driveway and Valley Gutter Replacement**

1. Item Description:

- a. Concrete Sidewalk Replacement
- b. Concrete Driveway and Valley Gutter Replacement.

2. Work Includes:

- a. Furnish and install concrete in accordance with VDOT specifications.
- b. Price includes removal and disposal of existing concrete sidewalk, driveway and valley gutter where required.

3. Unit of Measure:

- a. Concrete sidewalk replacement shall be measured in square yards.
- b. Concrete driveway and valley gutter replacement shall be measured in square yards.

4. No payment will be made for replacement sidewalk or driveway and valley gutter beyond the specified limits and as defined above.

### **C. Concrete Curb and Gutter Replacement**

- 1. Work Includes: Furnish and install concrete to replace concrete curb and gutter removed or damaged due to construction in accordance with VDOT specifications. Price includes removal and disposal of existing concrete curb and gutter where required.

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2. Unit of Measure: Linear foot of curb and gutter replaced, measured in place along the face of the curb.

No payment will be made for concrete curb and gutter replaced beyond the specified limits and as defined above.

### D. 21-A Stone

1. Work Includes: Furnish and install 21-A stone as a base or subbase in accordance with VDOT specifications.
2. Unit of Measure: Ton of stone placed
3. No payment will be made for stone placed beyond the limits specified or shown.

### E. Conformity with Contract Documents: It is the intent of the Contract Documents that all materials to be incorporated in the work and all construction work produced will be in close conformity with the specified values or ranges in values set forth for them in the Contract Documents. Less than exact or complete conformity may be tolerated in instances where obtaining exact or complete conformity would not be feasible, and when authorized by Fairfax Water.

1. Permissible tolerances for elevation of top of earthwork and the thickness of the several courses of select material, subbases and bases are specified in the various sections of the Contract Documents. When permissible tolerances are exceeded or in the event consistent deviations from plans or abrupt changes in grade occur, even though within the tolerances, the affected areas shall be reconstructed so as to conform to the specified tolerance and provide a smooth riding surface.
2. When it is not feasible to reconstruct the areas where the permissive tolerances have been exceeded, payment will be made in accordance with the applicable specification for each material placed.

### F. Measurement by Cubic Yard: Material that is measured by the cubic yard, loose measurement or vehicular measurement, shall be hauled in approved vehicles and measured therein at the point of delivery. Material measured in vehicles, except stream bed gravel, will be allowed at the rate of 2/3 the volume of the vehicle. The full volume of the vehicle will be allowed for stream bed gravel. Such vehicles may be of any size or type acceptable to Fairfax Water's Authorized Representative, provided the body is of such shape that the actual contents can be readily and accurately determined. Unless all approved vehicles are of uniform capacity, each vehicle shall bear a plainly legible identification mark indicating the specific approved capacity. Each vehicle shall be loaded to at least its water level capacity, and each load shall be leveled when the vehicle arrives at the point of delivery.

1. When approved by Fairfax Water's Authorized Representative in writing, material specified to be measured by the cubic yard may be weighed and such weights converted to cubic yards for payment purposes. Factors for conversion from weight to volume measurement will be determined by Fairfax Water's Authorized Representative and shall be agreed to by the Contractor before they are used.

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END OF SECTION 01200

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**SECTION 01400**

**REGULATORY REQUIREMENTS**

**PART 1 - GENERAL**

**1.01 SECTION INCLUDES**

- 1.02 References
- 1.03 Regulatory Requirements
- 1.04 Source of Supply and Quality Requirements
- 1.05 Material Inspection

**1.02 REFERENCES**

- A. Virginia Department of Transportation Road and Bridge Specifications
- B. Fairfax County Special Inspections Manual
- C. U.S. Department of Labor Occupational Safety and Health Regulations (OSHA)

**1.03 REGULATORY REQUIREMENTS**

- A. Compliance with the Law: Precautions shall be exercised at all times for the protection of persons and property. The safety provisions of all applicable laws, building and construction codes including, but not limited to, the U.S. Department of Labor Occupational Safety and Health Regulations for Construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54), shall be observed. The U.S. Department of Labor Safety and Health Regulations shall be complied with except where state safety standards have been approved by the Secretary of Labor in accordance with provisions of the Occupational Safety and Health Act, in which case compliance with state and local standards is required. The Contractor shall conduct his work so as to ensure the least possible obstruction to traffic. The Contractor shall provide for the safety and convenience of the general public and residents within the project limits and the protection of persons and property.
- B. Work on State Highways: Fairfax Water will obtain all permits required where Work is to be performed within the right-of-way of highways, roads, or other public areas under the control and jurisdiction of VDOT. The Contractor shall become familiar with the requirements of VDOT, particularly regarding cutting and crossing of roadways, materials, and methods of backfilling, maintenance of roadways, drainage and structures, protection of the traveling public, final restoration of roadway surfaces, tree clearings, and restrictions on working hours, before commencing work on highways, roads and other public areas under the control and jurisdiction of VDOT. The Contractor shall comply with all the requirements of VDOT pertaining to the Work to be performed under the Contract. The Contractor shall obtain a written approval and release from VDOT before final payment will be allowed under this Contract.

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- C. Work within Independent Cities: Fairfax Water will obtain all permits required where Work is to be performed within the right-of-way of highways, roads, or other public areas under the control and jurisdiction of the independent cities of Fairfax and Falls Church. The Contractor shall become familiar with the requirements of these Cities, particularly regarding cutting and crossing of roadways, materials, and methods of backfilling, maintenance of roadways, drainage and structures, protection of the traveling public, final restoration of roadway surfaces, tree clearings, and restrictions on working hours, before commencing work on highways, roads and other public areas under the control and jurisdiction of these Cities. The Contractor shall comply with all the requirements of these Cities pertaining to the Work to be performed under the Contract.
- D. Applicable Codes: The codes listed under references of this Section are the applicable codes for this project. Other standard codes which apply to the Work are designated in the individual specification Sections.

### **1.04 SOURCE OF SUPPLY AND QUALITY REQUIREMENTS**

- A. The materials used throughout the work shall conform to the requirements of the Contract Documents. The Contractor shall regulate his supplies so that there will be a sufficient quantity of tested material on hand at all times to prevent any delay of work.
- B. At the option of Fairfax Water's Authorized Representative, materials may be approved at the source of supply. If it is found during the life of the Contract that previously approved sources of supply do not supply materials or equipment conforming to the requirements of the Contract Documents, do not furnish the valid test data required to document the quality of the material or equipment, or do not furnish valid quantities to document payment, the contractor shall change the source of supply and furnish material or equipment from other approved sources.
- C. Materials shall not be furnished from a source that has been identified by the Office of Federal Activities as being on the EPA's list of violating facilities.
- D. When material are required to have approved mixture design(s) or job-mix formula(s), the most recently approved design(s) or formula(s) for the applicable source(s) of supply will be indicated by reference on the Contractor's copy of the approved source of supply statement. The Contractor shall be responsible for determining from his source(s) of supply and actual design(s) or formula(s) shown by the reference and shall keep informed as to any subsequently approved revisions and new designs or formulas for such source(s).
- E. When optional materials are included in the Contract Documents, the Contractor shall advise Fairfax Water's Authorized Representative in writing of the specific materials throughout the project unless a change is authorized in writing by Fairfax Water's Representative. Fairfax Water's Representative may authorize other types and sources in an emergency that will unreasonable delay delivery of the selected material.

### **1.05 MATERIAL INSPECTION**

- A. The Contractor will be responsible for supplying to Fairfax Water certificates of supply for all materials used on this project. If a material, i.e. concrete, is made up of more than one material,

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then a certificate must be furnished for each constituent. The certificate must state the supplier's name, source of supply and verify that if applicable, the product meets the standards of the Contract Documents. The certificate must be signed by the supplier and the Contractor. Certificates must be presented to Fairfax Water and approved prior to the use of the material on the project. Fairfax Water reserves the right to perform tests on the materials used at any time.

### **PART 2 - PRODUCTS**

2.01 Not Used

### **PART 3 - EXECUTION**

3.01 Not used

END OF SECTION 01400

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## SECTION 01700

### EXECUTION REQUIREMENTS

#### PART 1 - GENERAL

##### 1.01 SECTION INCLUDES

- 1.02 Maintenance During Construction
- 1.03 Barricades and Warning Signs
- 1.04 Protecting and Restoring Property
- 1.05 Environmental Stipulations
- 1.06 Disposal of Materials

##### 1.02 MAINTENANCE DURING CONSTRUCTION

- A. The Contractor shall maintain the work from the beginning of construction operations until final acceptance of the project. The maintenance shall constitute continuous and effective work prosecuted day by day with adequate equipment and forces to the end that the roadway or structures are maintained in satisfactory condition at all times, including barricades and warning signs.
- B. The Contractor must follow all VDOT Work Zone Safety regulations during the performance of the Work.
- C. When the Contract Documents specify the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.
- D. Unless otherwise specified, the Contractor shall bear all cost of maintenance work during construction and before the project is accepted and of construction and maintaining such approaches, crossings, intersections and other features as may be necessary, without direct compensation, except as provided in (b) and (f) herein; however, when the Contractor confines its operations to a specific section of a project or to areas adjacent to, but not including the surface of the roadway and reasonable width of shoulder thereto, and the surface is not disturbed or damaged by its operations or equipment, it shall not be responsible for the maintenance of the surface which remains undisturbed or undamaged.
- E. The Contractor shall keep the portions of the road being used by the public free from irregularities and obstructions of any kind which might represent a hazard or annoyance to traffic and in such condition that traffic will be adequately accommodated.
- F. Connections and Entrances: All connections with other roads, and public and private entrance shall be kept in a reasonable smooth condition for the safe passage of traffic at all times. Connections or entrances shall not be disturbed by the Contractor until necessary. Once connections or entrances have been disturbed, they shall be maintained and completed as follows:

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1. Connections – Connections which had an original paved surface shall be brought to final grade through the intersection, and a minimum of two lanes shall be paved with a temporary pavement as soon as possible after they are disturbed. All other connections shall be brought to final grade through the intersection and the required material or a temporary aggregate stabilization course placed as soon as possible after they are disturbed. In the event there are delays in the prosecution of the work on connections, those which were originally paved shall have a minimum of two lanes maintained with a temporary paved surface. Those which were not originally paved shall be maintained with a temporary aggregate stabilization course.
  2. Entrances – Entrances shall be graded concurrently with the roadway with which they intersect. Once an entrance has been disturbed, it shall be completed as soon as practicable including the placement of the required base and surface course or stabilization. In the event the entrance must be constructed in stages (as in the case where there is a substantial change in the elevation of the roadway with which it intersects), the surface shall be covered with a temporary aggregate stabilization course or other material salvaged from the entrance or project until the entrance can be completed and the required base and surface or stabilization course placed. Stabilization and/or surfacing material shall be applied to connections and entrances whenever directed by Fairfax Water. The Contractor shall schedule construction operations so that approved continuous access is provided to all property adjacent to the construction.
- G. The existing surface of the pavement shall be kept free of earth and other materials which might be hazardous to traffic.
1. Mailboxes and Newspaper Boxes: When removal of U.S. mail and newspaper boxes is made necessary by construction operations, the Contractor shall place such receptacle in temporary locations so that their usefulness will not be impaired. Prior to final acceptance of the project, mail boxes shall be placed in their permanent locations as indicated by Fairfax Water and left in as good condition as when found. All such mail or newspaper boxes or their supports which are damaged through negligence on the part of the Contractor shall be replaced at the cost of the Contractor. The cost of removing and resetting such mail and newspaper boxes shall be included in other appropriate pay items of the Contract.
  2. Haul Route: The Contractor shall select haul routes between the project and material source(s) that will minimize disturbance to the community. The Contractor shall furnish Fairfax Water's Authorized Representative, or review, his plan for the haul route and for minimizing the adverse effects of hauling operations on persons who reside adjacent to the haul route or who otherwise use a portion of the haul route for ingress or egress to their residential area. Fairfax Water may select alternate haul routes, divide the hauling traffic over several routes, and impose other restrictions deemed necessary to minimize the impact of the hauling operation on local residents.

### **1.03 Barricades and Warning Signs**

- A. The Contractor shall take all necessary precautions for the protection of the work and the safety of the public as described herein and in Sections 00700, 01400, and 02700.

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### **1.04 Protecting and Restoring Property**

- A. The Contractor shall preserve property and improvements along the lines of and adjacent to the work unless their removal or destruction is called for by the plans. The Contractor shall use suitable precautions to prevent damage to such property.
- B. When the Contractor finds it necessary to enter on private property, he shall secure from the owner or lessee a written permit for such entry prior to moving thereon. An executed copy of this permit shall be furnished to Fairfax Water's Authorized Representative.
- C. The Contractor shall be responsible for damage or injury to property during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the method of executing the work or attributable to defective work or materials. This responsibility shall not be released until final acceptance of the project.
- D. When direct or indirect damage is done to property by or on account of any act, omission, neglect, or misconduct in the method of executing the work or in consequence of the nonexecution thereof on the part of the Contractor, the Contractor shall restore such property to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or restoring, as may be directed by Fairfax Water's Authorized Representative, or making settlement with the property owner. The Contractor shall secure from the property owner a release from any claim against the Owner without additional compensation therefor. A copy of this release shall be furnished Fairfax Water's Authorized Representative.

### **1.05 Environmental Stipulations**

- A. No separate payment will be made for the work or precautions described herein except where provided for as a specific item in the Contract or except where provisions have been made for such payment in these specifications.
- B. Pollution:
  - 1. Water: The Contractor shall exercise every reasonable precaution throughout the duration of the project to prevent pollution of rivers, streams, and impoundments.

### **1.06 Disposal of Materials**

- A. In the performance of the work of this Contract, unsuitable materials, surplus materials or other construction debris, not designated by Fairfax Water for replacement within the project limits, shall be deposited on a site located outside the project limits in compliance with this Contract, and Federal, State and local laws and regulations. The Contractor shall obtain the necessary rights to the disposal site or sites utilized.
- B. The Contractor shall furnish Fairfax Water a statement signed by such disposal site owner in which the property owner agrees to the use of the property for the deposit of material from the project. Upon completion of the use of the property as a disposal area, the Contractor shall also furnish Fairfax Water a release signed by the property owner indicating that the property is in satisfactory condition.

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- C. Design, use, maintenance and restoration of the disposal site, along with the transportation of any materials, shall be in accordance with the terms of this Contract, any Contractor's agreement with the owner of the disposal site, Federal, State and local laws and regulations. Additionally, the Contractor shall obtain all Federal, State and local approvals and permits before beginning any disposal operations. The approvals and permits shall be available for review by Fairfax Water upon request. Whenever practicable, the Contractor should utilize disposal areas which are already approved and permitted for the disposal of unsuitable and/or surplus material.
  
- D. Failure to comply with this provision will constitute a material breach of this Contract which will entitle Fairfax Water to any and all remedies available pursuant to this Contract and under the law including, but not limited to, actual damages, penalties, fines, removal, restoration, attorney fees, and legal expenses.

END OF SECTION 01700

# IFB #20-050 – Pavement Restoration

## SECTION 02700

### PAVING AND SURFACING

#### PART 1 - GENERAL

##### 1.01 SECTION INCLUDES

- 1.02 Restoration of Paved and Unpaved Surfaces
- 1.03 Unit Prices
- 1.04 References
- 1.05 Definitions
- 1.06 Submittals
- 1.07 Regulatory Requirements
- 1.08 Warranty

#### PART 2 - PRODUCTS

- 2.01 Materials
- 2.02 Equipment
- 2.03 Mixes

#### PART 3 - EXECUTION

- 3.01 Preparation
- 3.02 Installation
- 3.03 Schedule

##### 1.02 RESTORATION OF PAVED AND UNPAVED SURFACES

- A. Includes restoration of pavement structure including surface, base, and subbase courses where applicable. This restoration shall include the following:
  - 1. Roads: Includes travel lanes and shoulders
    - a. VDOT Roads
    - b. Private Roads
- B. Driveways and Parking Areas
- C. Curb and Gutter
- D. Sidewalks, Trails
- E. Paved Ditches
- F. Pavement Markings

##### 1.03 UNIT PRICES

- A. Refer to Section 01200 - Measurement and Payment
- B. Limits for Payment:

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1. Permanent Pavement: Payment for 2-, 4-, 6-, 8-, 10-, 12-inch, and seal capping shall be for the amount actually placed as directed by Fairfax Water's Authorized Representative.

### **1.04 REFERENCES**

- A. Road and Bridge Specifications. Virginia Department of Transportation.

### **1.05 DEFINITIONS**

- A. Milling: Preparing rigid or flexible pavement for repair or overlay by removal of existing pavement to a depth of 1 inch.
- B. Seal Cap: An asphalt concrete surface coating of 1-1/4-inch thick applied over an existing paved surface to waterproof and preserve the surface and provide increased resistance to traffic abrasion.
- C. Pavement Overlay: An asphalt concrete surface course up to 2 inches in thickness applied over an existing, prepared, paved surface to restore the surface.

### **1.06 SUBMITTALS**

- A. Mix Design Data for Asphalt Concrete
- B. Sieve Analysis for Aggregate Materials

### **1.07 REGULATORY REQUIREMENTS**

- A. VDOT: Fulfill all provisions of the VDOT permit and applicable sections of the Road and Bridge Specifications

### **1.08 WARRANTY**

- A. Pavement Settlement: Shall be covered in accordance with VDOT Road and Bridge Specifications.

## **PART 2 - PRODUCTS**

### **2.01 MATERIALS**

- A. Aggregates: Aggregates include the granular materials used in the base and subbase courses of the pavement structure and the top course on gravel surfaces.
  1. Crusher Run: Crusher run shall conform to the requirements of the VDOT Road and Bridge Specifications.
    - a. Crusher Run shall be size number 25.
  2. Aggregate Base: Aggregate Base shall conform to the requirements of the VDOT Road and Bridge Specifications.
    - a. Aggregate base shall be Type I, Size 21A.
- B. Pavement Marking:

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1. Provide reflective, thermoplastic pavement marking materials conforming to the VDOT Road and Bridge Specifications.
2. Install pavement line marking in accordance with the requirements of the VDOT Road and Bridge Specifications.

### **2.02 EQUIPMENT**

- A. Roller: The roller shall be a self-powered, self-propelled unit with a manufacturer's rating of 7 to 10 tons.

### **2.03 MIXES**

- A. Asphalt Concrete: Asphalt concrete shall conform to the requirements of the type designated in accordance with the VDOT Road and Bridge Specifications.
  1. Surface course: Type SM-9.5A - Plant Mix.
  2. Base course and temporary surface course: Type BM-25.0.
- B. Portland Cement Concrete: In accordance with VDOT Road and Bridge Specifications.
- C. Asphalt Tack Coat: Asphalt tack coats shall conform to the requirements of the VDOT Road and Bridge Specifications.

## **PART 3 - EXECUTION**

### **3.01 PREPARATION**

- A. Removal of Temporary Pavement: Remove and dispose of temporary pavement materials in an approved manner, prior to installation of permanent pavement.
- B. Weather Conditions: Refer to VDOT Road and Bridge Specifications for restrictions to paving operations due to unfavorable weather conditions.

### **3.02 INSTALLATION**

- A. Permanent Pavement: Permanent restoration of pavement shall be with the same type of material as that removed or damaged during construction.
  1. Patches: Patches shall be a minimum of 1 foot wide and shall conform to the grade of the existing pavement.
    - a. On VDOT roads, provide a patch which is in accordance with the guidelines on the permit.
    - b. On private roads, sidewalks and trails, provide a patch which consists of layers of material which are equal in thickness to those of the existing pavement.
    - c. Replacement Curb and curb gutter shall match that which was removed in style and dimensions.
      - 1) Portland Cement Concrete curb and curb and gutter shall be completely replaced between expansion joints.

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- 2) Asphalt Concrete curb shall be saw cut at the interface between new and existing.
  - d. Maintain grades, alignment and configuration of paved ditches.
  2. Asphalt Concrete:
    - a. The surface course shall consist of a minimum 2-inch thick layer.
    - b. Base courses for roads shall consist of a minimum 10-inch course of well compacted, stabilized aggregate base materials as defined in this specification Section.
    - c. Provide an asphalt tack coat between each layer of the pavement structure.
    - d. Roll the patch with a self-powered, self-propelled unit as described in this specification Section.
  3. Seal Cap: Provide seal cap surface in accordance with the Drawings or as directed by Fairfax Water's Authorized Representative.
    - a. Prepare existing paved surface by milling and applying a tack coat in accordance with the VDOT Road and Bridge Specifications and as directed by Fairfax Water's Authorized Representative.
- B. Aggregate Surfaces:
1. Aggregate surfaced roads, road shoulders, driveways and trails: Provide a 10-inch well compacted stabilized layer of crusher run material over the entire width of the trench excavation.
    - a. Cap the original width of the aggregate surfaces with a 1-inch layer of crusher run material.
- C. Signal Light Loop Detector Repair:
1. If during the installation of the permanent pavement an existing signal light loop detector is damaged the Contractor must repair it in accordance with VDOT standards.
    - a. If the damage is unavoidable during the permanent pavement installation the Contractor shall submit a cost proposal to Fairfax Water and receive approval prior to making the repairs.

### **3.03 SCHEDULE**

- A. Time of Completion of Restoration: Permanent restoration of street surfaces shall be made in within 30 days of written notification of the work, except as required in Section 01100 Paragraph 1.08.

END OF SECTION 02700