



FAIRFAX COUNTY WATER AUTHORITY
8570 Executive Park Avenue, Fairfax, Virginia 22031-2218
www.fairfaxwater.org

INVITATION TO BID

Number: 20-053

Title: REHABILITATION AND REPAIRING OF
ANNANDALE RESERVOIRS 1 & 2

Project 0631A, Division 026

Date Issued: November 4th, 2020

Pre-Bid Meeting & Site Visit: November 16th, 2020 @ 10 A.M EST

Deadline for Questions: November 18th, 2020, 5:00 P.M. EST

Addendum 1 Issuance: November 20th, 2020

Deadline for Submitting Bids: December 3rd, 2020 @ 2:00 P.M. EST

Bids to Be Delivered to: Procurement Department
Fairfax Water – Morin Building
8570 Executive Park Avenue
Fairfax, Virginia 22031

Procurement Contact: Torry Huff, CPPB, VCO, VCCO
Senior Procurement Specialist
Telephone: 703-289-6263
E-Mail: thuff@fairfaxwater.org

Objective: The Fairfax County Water Authority (d/b/a: Fairfax Water) hereby invites bids from qualified contractors properly licensed in the Commonwealth of Virginia to provide cleaning, painting, and structural improvements to the 2.0 million gallon Annandale No. 1 and No. 2 steel ground storage reservoirs as per the drawings and specifications.

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FAIRFAX WATER
IFB 20-053
REHABILITATION AND REPAINTING OF ANNANDALE RESERVOIRS 1 & 2

SECTION 00100
NOTICE TO BIDDERS

PART 1 - GENERAL

- 1.01 The Fairfax County Water Authority (d/b/a: Fairfax Water) hereby invites bidders/contractors properly licensed in the Commonwealth of Virginia provide cleaning, painting, and structural improvements to the 2.0 million gallon Annandale No. 1 and No. 2 steel ground storage reservoirs as per the drawings and specifications.
- 1.02 Bids will be accepted in the Office of Procurement until 2:00 PM EST., December 3rd, 2020. Bids must be clearly identified as being for this particular Invitation for Bids (IFB). Fairfax Water shall not be responsible for the inadvertent opening or failure to receive a bid not properly labeled or identified by the Bidder. Any bid, or modification thereto, received in the Office of Procurement after the exact time and date specified for receipt will not be considered regardless of the circumstances related to its lateness or degree of lateness. Bids may be withdrawn by written notice prior to the date and time of receipt in accordance with provisions outlined in the bid documents.
- 1.03 Bids will be publicly opened and read aloud on December 3rd, 2020 at 2:00 PM EST., at Fairfax Water's office building, 8570 Executive Park Avenue, Fairfax, Virginia. Interested parties are encouraged to view the Bid Opening virtually using Microsoft Teams at the link provide below. Fairfax Water office spaces are currently closed to the public due to COVID-19.

Microsoft Teams meeting

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 571-348-5786](tel:+15713485786)

Phone Conference ID: 583 571 603#

- 1.04 All respondents to this IFB must submit their bid to the following address, either by hand delivery, US Postal Service or similar carrier (facsimile transmissions will not be accepted):

Hand delivery and US Postal Service:

Fairfax Water – Morin Building

8570 Executive Park Avenue

Office of Procurement

Fairfax, Virginia 22031

Attn: Torry Huff, CPPB, CPPO, VCO, VCCO
Senior Procurement Specialist

- 1.05 In order for a bid to be eligible for consideration, the bidder must be properly licensed as a contractor in the Commonwealth of Virginia in accordance with the requirements of the Virginia Code.
- 1.06 Bids may be withdrawn by written notice to Fairfax Water prior to the due date and time established for bid submissions herein in the manner prescribed in the Instructions to Bidders. Except as expressly set forth in the Instructions to Bidders, no bid may be withdrawn after the date and time established herein for the submission of bids.
- 1.07 Persons interested in examining and/or obtaining copies of the Contract Documents may contact Fairfax Water's Office of Procurement at (703) 289-6255, Monday through Friday, between the hours of 8:00 AM and 4:00 PM Eastern Time. Payment terms, if any, and document availability may be confirmed with Fairfax Water's Office of Procurement. Fairfax Water shall in no event refund any amount paid hereunder. Partial copies of the Contract Documents will not be distributed.
- 1.08 Bid security in the type and amount stated in the Instructions to Bidders shall accompany the Bid. Subject to the limitations set forth in the Instructions to Bidders, the Bid security shall be retained by the Owner if the successful Bidder fails to execute the Agreement and provide the required contract security and evidence of insurance within 10 days after Notice of Award is received by the Bidder. Contract security of the type and amount set forth in the Instructions to Bidders will be required from the successful bidder.
- 1.09 All prequalified responsive and responsible bidders will receive equal consideration for award.
- 1.10 Each bidder shall bear and be responsible for all costs, fees and expenses associated with its preparation and submission of a bid in response to this IFB. In no event shall any bidder be reimbursed by Fairfax Water for any such costs, fees or expenses

FAIRFAX WATER

By: Torry Huff, CPPB, CPPO, VCO, VCCO
Senior Procurement Specialist

**SECTION 00200
INSTRUCTIONS TO BIDDERS**

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**FAIRFAX WATER
SECTION 00200
INSTRUCTIONS TO BIDDERS**

1. BID PACKAGE

- a. The bid package must include the following items.
 - i. A completed Bid Form, Section 00400 of this IFB, including unit prices, if required, for performing the complete scope of work in accordance with these documents.
 - ii. A bid bond, a certified check upon a solvent bank or trust company, made payable to the order of Fairfax Water, or cash escrow in an amount not less than five (5) percent of the total bid price submitted.
 - iii. Any additional information required.

2. FORM, PREPARATION AND PRESENTATION OF BIDS

- a. Bidders shall complete and submit the entire Bid Form and retain a copy of the completed bid package for its records. Blank spaces provided for Bid Prices on the Bid Form must clearly indicate unit price, total price, or lump sum and must be filled in accordingly, either typewritten or printed in ink. If a Bid contains any omissions, erasures, illegible text, alterations, additions, or items not called for in the itemized Bid, or contains irregularities or unbalancing of any kind; such circumstance may constitute sufficient cause for rejection of such Bid. In case of any discrepancy in the unit price or lump sum price proposed for any item in the Bid, the price as expressed in written words will govern. In the event of a discrepancy between unit prices and totals, the unit pricing will govern and the total shall be adjusted accordingly.
- b. The Bid shall be signed, all blanks filled in, and presented on the prescribed form in a sealed envelope on or before the time and at the place stated in the Notice to Bidders. The envelope shall be labeled with the name of the person, firm or corporation presenting it, the date of presentation, and the title of the work for which the Bid is made.
- c. The sealed envelope containing the bid, endorsed as directed, must be addressed to Fairfax Water, at the address given in the Notice to Bidders. It is the Bidder's responsibility to ascertain that time of delivery for mailed bids is recorded by Fairfax Water personnel.
- d. Bids shall be submitted in an envelope that is clearly marked on the outside lower left corner as follows:

SEALED BID - DO NOT OPEN

BID NO. IFB 20-053

***REHABILITATION AND REPAINTING OF ANNANDALE RESERVOIRS 1
& 2***

Thursday, December 3rd, 2020, 2:00 P.M. EST.

Contractor Virginia Registration Number _____,

Expiration Date _____

- e. Bids sent via express delivery service must be sealed in an envelope inside the express container.
- f. Bids transmitted directly to Fairfax Water via facsimile or electronic transmission will not be accepted.

- g. Fairfax Water is not responsible for the premature opening of a bid not properly addressed and identified. Bids which are opened prior to the official time as a result of improper identification will be rejected.
- h. Any bid, information or materials relating to the IFB, which are submitted by the bidder and are received after the date and time set for receipt of bids, will not be opened and will not be considered regardless of the circumstances related to its lateness or degree of lateness.
- i. Section 00500 (Agreement) is included in the Bid Documents in order to familiarize Bidder with its contents. In no case is the Agreement Form to be filled out or signed by Bidder.

3. CONTRACTORS REGISTRATION LAW

- a. Bidders shall comply with all applicable laws, rules and regulations relating to the practice of General Contracting in the Commonwealth of Virginia. Each Bidder shall be required to be licensed in accordance with the requirements of Chapter 11, Title 54.1 of the Virginia Code, as amended, before such Bidder's bid may be received and considered hereunder.
 - i. For joint ventures, Bidders may provide either Contractor Registration Numbers for each party or a Contractor Registration Number for the joint venture.
- b. Each bidder shall list the Contractor Registration Number on the outside of the envelope containing his Bid and on his Bid Form in the space provided.
- c. Contractor's registration requirements shall apply to all subcontractors.
- d. 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.
- e. 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.

4. PREVAILING LAW AND POLICY

- a. Any contract resulting from this IFB shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of Virginia.

5. LAWS AND REGULATIONS

- a. Contractors will be required to comply with all applicable federal, state and local laws, rules, ordinances and regulations.

6. SPECIFICATION FAMILIARITY

- a. It is the Bidder's responsibility to examine this entire IFB carefully. If a question arises as to the meaning or intent of these documents, inquiry must be made in writing, via email, to the Procurement Contact.
- b. The submission of a bid shall indicate that the Bidder thoroughly understands the terms of the IFB.

7. CONTRACT DOCUMENTS

- a. Bidders are advised that Fairfax Water does not sign standard contract forms that may be used by the bidder. The Bid Form contains a signature line for the bidder that must be signed prior to submission of the bid by a representative of the bidder who is duly authorized to execute the Bid Form and to bind the bidder to the terms and conditions of the IFB.

8. QUANTITIES ESTIMATED ONLY

- a. 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.

9. 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. 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.

10. 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.

11. EXCEPTIONS

- a. Exceptions to any portion of this IFB will not be considered and, if offered, may result in rejection of the bid.

12. ADDENDA AND INTERPRETATIONS

- a. No interpretation of the meaning of these documents will be made to any bidder orally. Any request for an interpretation must be in writing and submitted via email to thuff@fairfaxwater.org, to Torry Huff, CPPB, CPPO, VCO, VCCO. To be given consideration, requests must be received no later than the time listed on the cover sheet. Any and all such interpretations and any supplemental instructions will be returned in writing to the prospective bidder requesting such interpretations, or will be in the form of written addenda which, if issued, will be sent to all prospective bidders, at the respective addresses furnished for such purpose, prior to the date fixed for the submission of Bids. Notwithstanding any provision to the contrary, the failure of any bidder to receive any such addenda or interpretations shall neither constitute grounds for withdrawal of a bid nor relieve such bidder from any obligation under his Bid as submitted. All addenda so issued shall become part of the Contract Documents.

13. WITHDRAWAL OF BID

- a. 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.
- 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.

14. ACCEPTANCE OR REJECTION OF BIDS

- a. After all bids have been examined, Fairfax Water reserves the right to reject any and all 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 in strict accordance with the Contract Documents. Any or all bids will be rejected if there is reason to believe that collusion exists among the bidders.
- c. Bids will be considered irregular and may be rejected if they show serious omissions, alterations in form, additions not called for, conditions, unauthorized alternates, illegible

text or irregularities of any kind. Fairfax Water reserves the right to waive such informalities as may be deemed to be in the best interests of Fairfax Water.

- d. A bidder's attempt to modify the Contract Documents in any respect, including, but not limited to the bidder's insertion of price escalation clauses, delivery costs, disclaimers, limitations of liability, or other terms and conditions of any nature which are not expressly allowed in this IFB, may constitute grounds for rejection of the bid.

15. BASIS OF AWARD

- a. Award will be made, if at all, to the lowest responsive and responsible bidder for the computed Total Price Bid based upon the specifications, terms and conditions contained herein.

16. BID OPENING

- a. Bids received in response to this IFB will be publicly opened at the date and time specified herein. Prices and other pertinent information contained in the bid will be read aloud. No decisions regarding the award of a contract will be made at the opening.
- b. Attendance is not required at the bid opening; however, bidders are encouraged to attend the virtual bid opening via Microsoft Teams.**
- c. In the event that only one Bid is received by Fairfax Water in response to this IFB, Fairfax Water may, in its discretion, decline to open such bid and may return the unopened envelope to the bidder.
- d. Unless bidders shall have been prequalified by Fairfax Water in connection with this procurement, Fairfax Water reserves the right following the opening of bids to require one or more bidders, including the apparent low bidder hereunder, to submit to Fairfax Water a completed Qualification Form, a list of references, a recent financial report, an OSHA Form 300, and such other information as shall enable Fairfax Water to determine whether such bidder is a responsible bidder, as such term is defined in the Virginia Code. Copies of the Qualification Form shall be made available to bidders upon request.

17. NOTICE OF AWARD

- a. The successful bidder will be notified by letter communicating Notice of Award of the Contract.
- b. Public notice of award will be posted on the official FW web site. (<http://www.fcwa.org/procurement/index.htm>).

18. NOTICE TO PROCEED

- a. The successful bidder shall be notified by letter, giving Notice to Proceed, when work may begin under the Contract Documents. Such Notice will be issued as determined by Fairfax Water but not before receipt and acceptance of the successful bidder's Payment and Performance Bonds, Certificate of Insurance, and a fully executed Agreement.

19. DESIGNATED MANUFACTURERS, SUBCONTRACTORS AND SUPPLIERS

- a. For purposes of this solicitation and any resulting contract, Fairfax Water's designation of any one or more manufacturers, subcontractors and/or suppliers in the Contract Documents shall signify only that such manufacturers, subcontractors and suppliers previously have submitted work samples to Fairfax Water that satisfied Fairfax Water's requirements.

Fairfax Water's designation of any one or more manufacturers, subcontractors and/or suppliers shall in no event be deemed or construed to be a representation or warranty on the part of Fairfax Water of any such manufacturer's, subcontractor's or supplier's capability of or capacity for (in terms of financial wherewithal, personnel and equipment availability, managerial ability, product quality or otherwise) performing or furnishing any portion of the Work in accordance with the requirements of this solicitation. Each bidder shall conduct such independent investigation into the qualifications, experience and abilities of its selected manufacturers, subcontractors and suppliers, as it deems appropriate under the circumstances.

20. ESCROW AGREEMENT

- a. In accordance with Section 2.2-4334 of the Virginia Code, as amended, the successful bidder shall have fifteen calendar days after Notice of Award is issued by Fairfax Water in which to execute and submit to Fairfax Water the attached escrow agreement. If the escrow agreement form is not submitted within the fifteen day period, the successful bidder shall forfeit his rights to the use of the escrow account procedure. A copy of the escrow agreement is included in these Contract Documents (Section 00850).

21. PRE-BID CONFERENCE

- a. A non-mandatory pre-bid conference will be held at the Annandale Reservoir Site – November 16th, 2020 10 AM EST. All Bidders are encouraged to attend. The purpose of the pre-bid conference is to afford the bidders an opportunity to raise questions pertaining to the construction documents, for the Owner or his representatives to clarify those points and to review the site conditions. In addition, other important specific features of the Project, which may develop during the course of the pre-bid conference, will be brought to the attention of the Bidders.
- b. Nothing discussed during the pre-bid conference shall be construed to have altered in any way the intent of the Bid Documents. Any modifications or revisions to the Bid Documents which may arise from or which may be discussed at the pre-bid conference shall not become effective unless issued in an Addendum.

END OF SECTION 00200

**SECTION 00400
BID FORM**

**IFB No. 20-053
PROJECT 0631A, DIVISION 026
REHABILITATION AND REPAINTING OF ANNANDALE RESERVOIRS #1 AND #2**

To Fairfax Water, 8570 Executive Park Avenue, Fairfax, Virginia, 22031:

Submitted by:

Name of Bidder: _____
(Legal Name of partnership, corporation or other form of entity)

Bidder's Mailing Address for Notices: _____

Bidder's Principal Office Address
(if different from above): _____

Form of Entity: _____

State of Organization: _____

Telephone No.: _____

Email Address: _____

Bidder's Designated Contact Person: _____

The above-named Bidder affirms and declares:

1. This Bid is made without any understanding, agreement or connection with any other individual, partnership, corporation or other entity making a bid for the same purpose, and is in all respects fair and without collusion or fraud.
2. The Bidder is not in arrears to Fairfax Water or Fairfax County upon debt or contract, and is not in default, as surety or otherwise, upon any obligation to Fairfax Water or Fairfax County.
3. No officer or employee whose salary is payable in whole or in part by Fairfax Water is presently nor shall become interested, directly or indirectly, as a contracting party, partner, stockholder, surety or otherwise, in this Bid, or in the performance of the Contract, or in the supplies, materials, or equipment and work or labor to which it relates, or in any portion of the profits thereof.
4. All proposed goods and services shall satisfy fully the requirements of the Contract Documents.

5. The Bidder is financially solvent and sufficiently experienced and competent to perform the Work.
6. The Bidder has carefully examined the site of the Work and, from his own investigations, is satisfied as to the nature and location of the Work; the character, quality and quantity of existing materials and all conditions likely to be encountered; the kind and extent of equipment and other facilities needed for the performance of the Work; the general and local conditions; and all other items which reasonably may be expected to affect the Work or its performance.
7. The undersigned bidder hereby represents and warrants to Fairfax Water that the bidder: (a) has reviewed and thoroughly understands the scope, terms and conditions set forth in this IFB; (b) has made due inquiry of Fairfax Water as to the existence of any addenda issued in connection with this IFB; (c) is satisfied that it has received any and all such addenda and the bidder has taken the contents thereof into consideration when preparing and submitting this Bid; and (d) accepts full and complete responsibility for the receipt of any and all such addenda and waives any claim of mistake or error in its Bid based upon its failure, in fact, to have reviewed all applicable addenda.
8. The undersigned bidder also declares that it has carefully examined and fully understands all the component parts of the Contract Documents and agrees, if awarded the Contract, to execute the Agreement and furnish the required contract security and evidence of insurance required by the Contract Documents, and to perform all of the Work in strict accordance with the terms of the Contract Documents for the prices set forth on the following page(s).

**FAIRFAX WATER
IFB No. 20-053
PROJECT 0631A, DIVISION 026
REHABILITATION AND REPAINTING OF ANNANDALE RESERVOIRS #1 AND #2**

PART A – BASE BID PRICE

INSTRUCTIONS - The Bidder shall fill in all blanks providing the following: The Bidder's proposed Unit Price in words; the Bidder's proposed Unit Price in figures; and the Bidder's proposed computed total price in figures, for each Contract Item described below. (The computed total price is obtained by multiplying the Estimated Quantity by the Bidder's proposed Unit Price.) Written amounts shall govern in case of discrepancy between the amounts stated in writing and the amounts stated in figures. In case of discrepancy between unit prices and totals, unit prices will prevail.

All blanks shall be filled in.

Contract Item No.	Description of Work Price in Words	Estimated Quantity	Unit Price	Computed Total Price
1	All Work to complete the cleaning and repainting, repairs, and modifications for Annandale Reservoir #1 <hr style="width: 50%; margin-left: 0;"/> <hr style="width: 50%; margin-left: 0;"/> Dollars and <hr style="width: 50%; margin-left: 0;"/> Cents	L.S.	N/A	\$ _____
2	All Work to complete the cleaning and repainting, repairs, and modifications for Annandale Reservoir #2 <hr style="width: 50%; margin-left: 0;"/> <hr style="width: 50%; margin-left: 0;"/> Dollars and <hr style="width: 50%; margin-left: 0;"/> Cents	L.S.	N/A	\$ _____

3	Repair Welding, if required, unit price per man-hour: _____ _____ Dollars and _____ Cents	80 M.H.	\$ _____ MH	\$ _____
4	Pit Filling and Surfacing, if required, unit price per gallon: _____ _____ Dollars and _____ Cents	10 GAL.	\$ _____ GAL	\$ _____
5	Interior Chipping and/or Grinding, if required, unit price per man-hour: _____ _____ Dollars and _____ Cents	180 M.H.	\$ _____ MH	\$ _____
6	Roof Patch Plates, if required, unit price per linear foot of plate: _____ _____ Dollars and _____ Cents	500 L.F.	\$ _____ LF	\$ _____

7	Roof Structure Bolts, if required, unit price per bolt: _____ _____ Dollars and _____ Cents	400 EA.	\$ _____ EA	\$ _____
8	Rafter Bracing, if required, unit price per bracing: _____ _____ Dollars and _____ Cents	87 EA.	\$ _____ EA	\$ _____
9	Annandale Reservoir #1 – Roof Rafter Replacement, if required, unit price per rafter: _____ _____ Dollars and _____ Cents	102 EA.	\$ _____ EA	\$ _____
10	Annandale Reservoir #2 – Roof Rafter Replacement, if required, unit price per rafter: _____ _____ Dollars and _____ Cents	72 EA.	\$ _____ EA	\$ _____

11	Bid Allowance, if required and authorized by Owner, for additional Structural Repairs: <hr/> <hr/> _____ Dollars and <hr/> _____ Cents	L.S.	N/A	\$200,000
Computed Total Amount for All Contract Items (Sum of Contract Items 1 through 11 above) <hr/> <hr/> _____ Dollars and <hr/> _____ Cents <hr/> <hr/>		 \$ _____ <hr/>		

See Section 01200, Measurement and Payment, for requirements.

PART B – PAY ITEMS TO BE INCLUDED IN THE BASE BID AND REFLECTED IN SCHEDULE OF VALUES

1. CONSTRUCTION SCHEDULE \$2,500 See specification section 01320

This pay item is not an allowance and the contractor must account for the designated value noted above in Contract Item No. 1 for the project and reflected as such in the schedule of value. The Payment for these items will be made as outlined in applicable specification sections.

PART C – QUALIFICATIONS OF BIDDERS

The Bidder shall have experience with work similar in scope and size to the work outlined in this IFB and shall submit three (3) projects which have been successfully placed in service since January 1, 2015. These projects shall include welding repairs, abrasive blast cleaning, and repainting of welded steel water storage tanks greater than or equal to 1,000,000 gallons in capacity and that were each valued at a minimum of \$500,000. Fairfax Water reserves the right to be the sole judge of the qualifications of the Bidder in performing work and to reject any bid from contractors that do not meet these minimum experience requirements.

In the spaces set forth below, please provide the information requested with regard to three projects performed by the Bidder which meet the requirements as set forth in the Instructions to Bidders and Bid Form.

Project Reference 1

1. Project identification, location, and date completed:

2. Name, title, address, phone numbers, and email of the owner:

Owner: _____

Address: _____

Telephone: _____

Email: _____

Individual to Contact and Title: _____

3. Description of specific work performed:

4. Contract price:

Original contract value: _____

Final contract value: _____

Project Reference 2

1. Project identification, location, and date completed:

2. Name, title, address, phone number, and email of the owner:

Owner: _____

Address: _____

Telephone: _____

Email: _____

Individual to Contact and Title: _____

3. Description of specific work performed:

4. Contract price:

Original contract value: _____

Final contract value: _____

Project Reference 3

1. Project identification, location, and date completed:

2. Name, title, address, phone number, and email of the owner:

Owner: _____

Address: _____

Telephone: _____

Email: _____

Individual to Contact and Title: _____

3. Description of specific work performed:

4. Contract price:

Original contract value: _____

Final contract value: _____

All blanks must be filled in:

In submitting this Bid, it is understood that the right is reserved by Fairfax Water to reject any and all Bids. It is agreed that this Bid may not be withdrawn for a period of ninety (90) days from the date fixed for opening of the Bids.

Accompanying this Bid, at the election of the undersigned bidder, is: (i) a certified check, (ii) a cash escrow, or (iii) a bid bond in the sum of _____ Dollars (\$ _____), which certified check shall become the property of Fairfax Water, or which cash escrow or bid bond shall become forthwith due and payable to Fairfax Water, if this Bid shall be accepted by Fairfax Water and the undersigned shall fail to execute a contract with, and to furnish the required contract security and certificates of insurance to, Fairfax Water, within 10 days after the date of a written notice by Fairfax Water to the undersigned so to do; however, no forfeiture under a bid bond or other such bid security shall exceed the difference between the bid for which the bond or other bid security was posted and the next low bid.

Date: _____

(Printed Legal Name of Bidder)

By: _____
(Signature of Bidder's Authorized Representative)

Printed Name: _____

Title: _____

Bidder's Virginia Contractor's Registration Number: _____

State in which Bidder's Principal Office is Located: _____

_____ elects _____ , does not elect _____ to utilize our
(Printed Legal Name of Bidder)

option to have retainage funds placed within an escrow account as outlined within Section 00850 of these Contract Documents.

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:

END OF SECTION 00400

NO TEXT THIS PAGE

SECTION 00430

IFB 20-053

REHABILITATION AND REPAIRING OF ANNANDALE RESERVOIRS #1 AND #2

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:

REHABILITATION AND REPAIRING OF ANNANDALE RESERVOIRS #1 AND #2

(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 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 Obligee, 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 _____, 2020.

(Seal)

Principal

By: _____

Name: _____

Title: _____

(Seal)

Surety

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

Name: _____

Title: _____

END OF BID BOND

SECTION 00500

AGREEMENT

CONTRACT NO._____

THIS AGREEMENT, made and entered into this _____ day of _____, in the year ____ between the Fairfax County Water Authority, hereinafter referred to as the Owner or Fairfax Water, and _____, hereinafter referred to as the Contractor, in consideration of the mutual covenants and agreements hereinafter set forth, provides as follows:

Article 1. THE PROJECT

The Project is designated as follows:

Rehabilitation and Repainting of Annandale Reservoirs #1 and #2

Article 2. WORK

- 2.1 Contractor shall provide all materials, tools, equipment, labor, and professional and non-professional services, and shall perform all acts necessary to fully complete the Work in strict accordance with the requirements of the Contract Documents. The Work is generally described as follows:

The complete cleaning and repainting of the interior and complete cleaning and repainting of the exterior with containment of two 2,000,000 gallon steel ground storage tanks, "Annandale Reservoirs #1 and #2," including repairs, modifications, and other miscellaneous related construction activities to provide for the proper and successful completion of the Work. Refer to Section 01110, Summary of Work.

- 2.2 The Contractor shall provide and pay for all related facilities described in the Contract Documents, including Work expressly specified as well as Work which can be reasonably inferred as necessary to produce the results intended by the Contract Documents.

Article 3. ENGINEER

- 3.1 This Project has been designed by:

TANK INDUSTRY CONSULTANTS

hereinafter referred to as the "Engineer" as defined in the General Conditions.

Article 4. CONTRACT SUM

- 4.1 Fairfax Water will pay the Contractor for Work completed in accordance with the Contract Documents, in U.S. currency, the Contract Sum _____, as such may be adjusted from time to time in accordance with the Contract Documents.

Article 5. CONTRACT PERIOD

- 5.1 Time is of the essence. The Contractor shall achieve Beneficial Use within 240 calendar days total for both tanks and shall achieve Final Completion within 270 calendar days from the date of Notice to Proceed. The two tanks may be out of service at the same time.

Article 6. LIQUIDATED DAMAGES

- 6.1. The amount of liquidated damages referred to in Article 8 of the General Conditions shall be \$2,200.00 per day, beyond the beneficial use completion date, and \$1,100.00 per day beyond the final completion date, as set forth in the Contract.

Article 7. TIME PROVISIONS

- 7.1. The time of completion includes provisions for shop drawing submittal and review, abrasive blasting and/or cleaning of tank surfaces to be painted, painting, structural modifications or improvements, deliveries, schedule requirements noted within contract drawings, as well as weather delays associated with normal climatic conditions. The contractor shall not be permitted any additional time, except as allowed under Article 8, part C of the General Conditions.
- 7.2. "Beneficial Use" means that the facilities are completed to the point that each tank is cleaned, painted, cured, disinfected, and returned to service such that water can be provided to the water transmission/distribution system in the quantity and quality satisfactory to the Engineer. All water system pipelines and appurtenances shall be installed, tested, and operational or temporary arrangements satisfactory to Owner shall have been made, hydrostatic testing, disinfection and flushing shall be completed prior to the date of Beneficial Use in accordance with the Specifications herein. Final copies of all operational and maintenance manuals shall be submitted 30 days prior to the date of Beneficial Use in accordance with Section 01770, Closeout Procedures."
- 7.3. "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.

Article 8. PAYMENTS

- 8.1. Payment under this Contract shall be made in the manner provided in Article 10 of the General Conditions.

Article 9. AVAILABILITY OF FUNDS

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

Article 10. CONTRACT DOCUMENTS

- 10.1. The Contract Documents listed in Article 3, A.1 of the General Conditions, comprise the entire agreement between the Owner and the Contractor with respect to the Project.

Article 11. MISCELLANEOUS

- 11.1. Capitalized terms which are used and otherwise defined in this Agreement shall have the meanings given them in Article 1 of the General Conditions.
- 11.2. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one document.

11.3 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of law principles.

IN WITNESS THEREOF, the parties have caused their duly authorized representatives to execute this Agreement effective as of the date first written above.

FAIRFAX COUNTY WATER AUTHORITY

By: _____
Steven T. Edgemon
General Manager

[CONTRACTOR]

By: _____
[Name]
[Title]

END OF AGREEMENT

SECTION 00610

IFB 20-053

REHABILITATION AND REPAIRING OF ANNANDALE RESERVOIRS #1 AND #2

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

REHABILITATION AND REPAIRING OF ANNANDALE RESERVOIRS #1 AND #2

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:

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 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: _____

Name: _____

Title: _____

Address of Surety: _____

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

END OF PERFORMANCE BOND

SECTION 00611

IFB 20-053

REHABILITATION AND REPAIRING OF ANNANDALE RESERVOIRS #1 AND #2

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

REHABILITATION AND REPAIRING OF ANNANDALE RESERVOIRS #1 AND #2

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.

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.

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 hereon 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

By: _____

Name: _____

Title: _____

Address of Surety: _____

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

END OF PAYMENT BOND

IFB 20-053

REHABILITATION AND REPAITING OF ANNANDALE RESERVOIRS #1 AND #2

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we,

_____ (hereinafter called "Principal"), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, and authorized to transact business in the Commonwealth of Virginia as a surety (hereinafter called "Surety"), as Surety, are held and firmly bound unto Fairfax County Water Authority, d/b/a Fairfax Water, 8570 Executive Drive Fairfax VA 22031 (hereinafter called the "Obligee") in the sum of _____ DOLLARS (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the Principal and Surety hereby bind themselves, their successors and permitted assigns, jointly and severally and firmly by these presents.

WHEREAS, the Principal entered into a certain contract with the Obligee, dated _____, 20__ (such contract, defined therein as the Contract or the Contract Documents, hereafter referred to as the "Contract") for Obligee's Hospital Elevated Water Tank Rehabilitation, IFB No. 19-36, which Contract is incorporated herein by reference; and

WHEREAS, the Contract requires the execution and delivery of this Maintenance Bond to the Obligee on or before the date of Final Completion established in accordance with the Contract (hereafter, the "Contract Completion Date").

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH that, if the Principal shall, without cost to the Obligee, cause the coatings referred to in Section 09900 of the Contract Specifications (Painting) to be and remain free of any defects or deficiencies of any type or description (including but not limited to defects or deficiencies attributable to defective, faulty, or inferior workmanship and/or materials), and shall replace and repair any such defects and/or deficiencies with respect to the coatings (including but not limited to any defects and/or deficiencies discovered during inspections required to be performed by the Principal on the first and second anniversaries of the Contract Completion Date), all for a period of two (2) years after the Contract Completion Date, then this obligation shall be void; otherwise it 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 respective successors and permitted assigns.

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 Maintenance Bond shall not in any manner be impaired or affected by any extension of time, modification, omission, addition or amendment of or to the inspection and repair services to be performed by the Principal in accordance with Section 09900 of the Contract Specifications (Painting), 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, and amendments. The Obligee's omission to call upon or provide notice to 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 must be in writing and will 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 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 Obligee, to the addresses set forth in the Contract, and if to the Surety, to the address set forth beneath its signature. As used herein, the term "assigns" shall be limited to those assigns permitted in writing by the Obligee.

Unless the context otherwise requires, capitalized terms not otherwise defined in this Maintenance Bond shall have the meanings assigned to them in the Contract. This Maintenance Bond shall be deemed to incorporate all provisions required by law to be set forth herein. Any action to enforce the obligations evidenced by this Maintenance Bond shall be brought in a court of competent jurisdiction in the Commonwealth of Virginia.

IN WITNESS WHEREOF, the Principal and the Surety have each caused this Maintenance Bond to be signed and sealed by their duly authorized officers effective as of the ___ day of _____, 20__.

Principal

(SEAL)

By: _____

Name: _____

Title: _____

Surety

(Seal)

By: _____

Name: _____

Title: _____

Address of Surety: _____

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

END OF MAINTENANCE BOND

SECTION 00700
GENERAL CONDITIONS

ARTICLE 1	DEFINITIONS
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ARTICLE 1 - DEFINITIONS

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

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

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

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

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

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

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

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

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

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

"CONTRACT ITEM" shall mean a component of the Work required or described in the Contract Documents. The term "Item" as used in the Specifications (Section 01200, 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.

"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.

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

"GENERAL MANAGER" shall mean the General Manager of Fairfax Water, or his designee.

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

"LAWS AND REGULATIONS" or "LAWS OR REGULATIONS" shall mean any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction, which are in effect at the time of the opening of Bids.

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

"NOTICE" shall mean written notice. Written notice shall be deemed to have been duly served on the Contractor if delivered by U.S. Mail, hand delivery, or facsimile transmission to the Contractor's office at the Project or to the business address or fax number of the Contractor as stated on its Bid Form; or if delivered in person to the Contractor, to the Contractor's foreman or superintendent for the Project, or any officer or director of the Contractor. Unless otherwise specified herein, Notice shall be deemed to have been duly served on the Owner if delivered by U.S. Mail, hand delivery, or facsimile transmission to the Director Planning & Engineering, Fairfax Water, 8570 Executive Park Avenue, Fairfax, Virginia 22031, fax number (703) 289-6262. Any Notice that is sent by fax to a party hereunder shall be effective, and shall be deemed to have been received, only upon delivery of a duplicate copy by another means of delivery authorized herein. Either party may, by written notice delivered in the manner prescribed herein, change its address for receipt of Notices hereunder.

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

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

"OWNER" shall mean the Fairfax County Water Authority, a public body politic and corporate organized and existing under the laws of the Commonwealth of Virginia.

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

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

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

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

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

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

"SUBCONTRACTOR" shall mean any person or entity, other than an employee of the Contractor, who contracts with the Contractor to furnish, or who actually furnishes labor, materials, services, or equipment or any combination of labor, materials, services and equipment to the Contractor or other subcontractors.

"SUPPLIER" shall mean a manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with the Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or any Subcontractor.

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

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

"WORK ORDER" shall mean a written directive to the Contractor issued on or after the Effective Date of the Agreement and signed by the Owner and recommended by the Engineer ordering an addition, deletion, or revision in the Work. A Work Order shall be issued on the form attached to the Contract Documents as Exhibit 2.

"DIRECTED," "PERMITTED," "ORDERED," "DESIGNATED," "PRESCRIBED" and words of like import when used shall mean the direction, requirement, permission, order, designation, or prescription of the Owner or the

Engineer. "ACCEPTABLE," "SATISFACTORY," "IN THE JUDGMENT OF," and words of like import when used shall mean acceptable to, satisfactory to or in the judgment of the Owner or Engineer.

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

ARTICLE 2 - CONTRACTOR'S RESPONSIBILITY

A. Contractor's Responsibility:

1. The Contractor shall perform all of the Work and shall furnish, at his own cost and expense, all labor, materials, equipment, and other facilities, except as herein otherwise provided, as may be necessary and proper for performing and completing the Work. The Contractor shall be responsible for the entire Work until completed and finally accepted by Fairfax Water. Unless the specification text expressly states that another party will be responsible for performing certain activities or providing certain material, the Contractor shall be responsible for performing the Work. Among other things, the Contractor acknowledges its responsibilities with respect to shop drawings and the construction schedule as specified in the Contract Documents
2. Unless otherwise expressly provided, the Work must be performed in accordance with the best modern practice and with materials and workmanship of the highest quality, all as determined by, and entirely to the satisfaction of, Fairfax Water and the Engineer.
3. Unless otherwise expressly provided, the means and methods of construction shall be such as the Contractor may choose; provided, however, that the Contractor shall employ adequate and safe procedures, methods, structures and equipment. Neither Fairfax Water's approval nor its failure to exercise approval shall relieve the Contractor of its obligation to accomplish the result intended by the Contract, nor shall Fairfax Water's approval or failure to approve create a cause of action for damages. Notwithstanding the rights and remedies retained by Fairfax Water and the Engineer hereunder, including without limitation, Fairfax Water's and the Engineer's right to monitor the progress of the Work and to accept or retract acceptance of Subcontractors, the Contractor expressly acknowledges and agrees that it is in charge of and in control of the Work.
4. The Contractor understands that for all or some of the Contract Period there will be other contractors on the site which are working under their own contracts with Fairfax Water. The Contractor acknowledges that it is obligated to coordinate its activities and to cooperate with such contractors and also affirms that it has included in its bid price the full cost of doing so. The Contractor agrees that it will not make a claim against Fairfax Water for additional compensation as a result of unforeseen coordination costs arising from the activities of such other contractors except where such coordination results in an "unreasonable delay" as defined in Article 8 hereof.
5. The Contractor acknowledges that, during its performance of the Work, the Contractor may encounter physical and/or subsurface conditions at the Site which differ materially from those known to, or reasonably anticipated by, the parties at the time the Contractor submitted its bid for the Work. Notwithstanding the foregoing, the Contractor agrees that it shall bear full and complete responsibility for any and all additional costs incurred by the Contractor due to any conditions encountered at the Site which differ in any respect from those known to, or reasonably anticipated by, the parties at such time. Fairfax Water shall in no event be responsible for damage to the Contractor's property or equipment which is caused by any such unknown or unanticipated conditions at the site. The Contractor covenants and agrees that it shall not make any claim for additional compensation from Fairfax Water as a result of any such differing site conditions.

6. The Contractor shall in no event be or become entitled to receive additional compensation from the Owner based upon a claim following the submission of its bid, or following its execution of the Contract, in connection (i) with the imposition or increase of any tax or charge not previously anticipated nor (ii) with any escalation in the cost of materials, equipment, supplies, services, labor, permits, or any other items of expense associated with the Contractor's full and complete performance of the Work.
 7. The Contractor hereby covenants and agrees that it does not, and shall not during the Contract Period, knowingly employ an unauthorized alien (as such term is defined in the federal Immigration Reform and Control Act of 1986).
- B. Approval Requests: The Contractor shall submit to Fairfax Water in writing all items required to be brought to Fairfax Water's attention or to be submitted for approval. These items must be submitted sufficiently in advance of the date upon which the information or approval is actually required by the Contractor to allow Fairfax Water to take appropriate actions so as not to delay the Work. The Contractor shall not have any right to an extension of time due to delays caused by his failure to submit any item in a timely fashion.

ARTICLE 3 - THE CONTRACT

A. The Contract:

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

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

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

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

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

2. The Contract Documents are intended to be complementary, and what is called for or required by any one part is as binding as if called for or required by all. The Contractor has a duty to thoroughly review the Contract Documents and to identify any conflicts, errors, or ambiguities therein. The Contractor must promptly report any conflict, error, ambiguity, or discrepancy in the Contract Documents to the attention of Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and to the Engineer, in each case in writing, before proceeding with the Work affected thereby. Fairfax Water will resolve the matter in writing. Work performed by the Contractor after issuance of the Notice to Proceed and prior to written resolution thereof by Fairfax Water, shall be performed at the

Contractor's own risk. In resolving such conflicts, errors, ambiguities and discrepancies, the Contract Documents shall be accorded the following order of precedence:

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

3. The drawings and specifications are divided into sections solely for purposes of convenience and clarity. The Contractor shall not construe such sections as a division of the Work into various subcontractor units. The Contractor is responsible for furnishing all Work as shown on the drawings and in the specifications.
4. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, code, or custom of any technical society, organization or association (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

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

5. The Contractor and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Fairfax Water:
 - a. shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of the Engineer or Engineer's Consultant; and
 - b. shall not reuse any of such Drawings, Specifications, other documents, or copies on extensions of the Project or any other project without written consent of Fairfax Water and Engineer and specific written verification or adaptation by the Engineer.
- B. Entire Contract: This Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements. This Contract

may not be modified or amended except by written agreement signed by the Contractor and Fairfax Water or by a written directive issued by Fairfax Water in the manner prescribed herein. This requirement for any modifications to be in writing may not be orally modified.

C. Contractual Claims:

1. If the Contractor wishes to make a contractual claim, whether for extra compensation, damages or any other relief, he shall give Fairfax Water Notice in strict accordance with the provisions of paragraph 3.E.1 herein. The Contractor's failure to comply strictly with the requirements of paragraph 3.E.1 shall result in waiver of the claim.
2. Resolution of any outstanding claims, counterclaims, disputes and other matters in question arising out of or relating to the Contract Documents to the extent not resolved by the parties hereto, shall be decided by a court of competent jurisdiction in the Commonwealth of Virginia; provided, however, that nothing contained herein shall be construed to invalidate the finality of Fairfax Water's decisions. Fairfax Water and the Contractor hereby waive any right they may have to a jury trial in connection with the resolution of any such claim, counterclaim, dispute or other matter arising out of or in connection with the Contract Documents.

D. No Claims Against Individuals: No claim whatsoever shall be made by the Contractor against any officer, Member, Authorized Representative or employee of Fairfax Water or Engineer for, or on account of, anything done or omitted to be done in connection with this Contract, and the Contractor shall be strictly liable for all costs, attorneys' fees and expenses incurred by any individual or entity who is sued in violation of this section.

E. Disputes: In order to: (i) clearly identify the existence of a dispute between the parties and (ii) promote the prompt, efficient and fair resolution of each such dispute, the parties shall adhere strictly to the claims resolution procedure set forth below. Time is of the essence in meeting these requirements.

1. If the Contractor wishes to dispute any Work that is required, necessitated, or ordered by the Engineer or Fairfax Water, or otherwise to claim that any action required or ordered by the Engineer or Fairfax Water to be taken or not to be taken violates the terms and provisions of this Contract, then the Contractor shall proceed with such Work and/or comply with such requirement or order without delay and shall, within 5 days after the earlier of (a) commencing such Work, or (b) receiving notice of such requirement or order, notify Fairfax Water and the Engineer, in writing, of his claim with respect thereto and request a written determination thereof. In order to invoke the procedures of this section, the Contractor's request must: (i) refer specifically to this section by number; (ii) be submitted in writing to Fairfax Water's Project Manager and Fairfax Water's Manager of Construction Department; (iii) contain a full explanation of the basis of the Contractor's claim or dispute and the rationale for its request, including accurate copies of all supporting documentation; and (iv) detail the quantum of any relief requested by the Contractor and provide substantiation of all amounts. No request for a change order, request for change proposal, or other requested modification shall be sufficient, on its own or collectively, to satisfy, or to defer the commencement of, the notice requirements set forth in this Paragraph 3.E.1. Fairfax Water shall issue a written determination with regard to any such claim on or before the date that is 30 days after the date of its receipt of the Contractor's written request; provided, however, that in the event that Fairfax Water determines, based upon the size or complexity of the claim at issue, that additional time is required for the issuance of a response, Fairfax Water shall issue written notice of such finding to the Contractor within 30 days following the date of its receipt of the Contractor's written request and shall issue a written determination with regard to such claim on or before the date that is 45 days after the later of (i) the date of Fairfax Water's receipt of the Contractor's written request or (ii) the Contractor's submission of all supplemental information requested by Fairfax Water.

The Contractor's failure to submit promptly any supplemental information requested by Fairfax Water shall result in the waiver of the claim. In the event that the Contractor disagrees with Fairfax Water's written determination, then the Contractor may request a review and reconsideration of that decision by the General Manager by submitting a written request for review to the General Manager (with copies to Fairfax Water's Director of Planning and Engineering and Fairfax Water's Manager of Construction Department) within 5 days after the Contractor's receipt of Fairfax Water's initial written determination. In such event, the General Manager (or his authorized designee) shall issue a written final decision on behalf of Fairfax Water within 30 days after his receipt of the Contractor's request for review. In the event that Fairfax Water fails to issue a written determination within any of the time periods specified herein, such failure shall be deemed to constitute a denial of the claim by Fairfax Water, effective upon the last day of the applicable time period without further administrative review by Fairfax Water. In order to preserve his right to claim compensation for such Work, or damages resulting from any compliance required of the Contractor under the preceding paragraph, the Contractor shall, within 5 days after receiving notice of any determination and direction issued by or on behalf of Fairfax Water, notify Fairfax Water, in writing, that the Work is being performed or that the determination and direction is being complied with under protest. Failure of the Contractor to so notify Fairfax Water as provided herein shall constitute a waiver and release of the Contractor's right to claim compensation for any Work performed under protest or for any damages resulting from such compliance.

2. All monies owed and not in dispute will be made available to the Contractor in accordance with the Contract Documents. Any request for an extension of time in connection with disputed Work shall be governed by Article 8.

- F. **Benefit of Agreement:** The Contract Documents shall be enforceable and binding upon, and shall inure to the benefit of, the parties hereto, their respective successors and permitted assigns. Nothing contained herein, express or implied, is intended to or shall confer upon any other person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

ARTICLE 4 - CONFORMANCE WITH CONTRACT DOCUMENTS

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

- C. In no event shall any waiver on the part of Fairfax Water of any breach of this Contract by the Contractor constitute or be construed to be a waiver of any subsequent breach of this Contract by the Contractor. The terms of this Contract shall be in addition to, and not a limitation on, any and all rights and remedies which Fairfax Water has or may have at law or in equity. Fairfax Water will have the right to enjoin the Contractor against any breach of the terms of this Contract without any showing that such relief is necessary to avoid irreparable injury or that there is no adequate remedy at law.

ARTICLE 5 - ROYALTIES AND PATENTS

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

ARTICLE 6 - PROTECTION OF PERSONS AND PROPERTY

- A. Safety and Protection:
1. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. The Contractor shall comply with all applicable laws, rules, regulations and ordinances relating to safety and shall provide all necessary protection to prevent damage, injury, or loss to:
 - a. Employees providing services in connection with the Work and other persons who may be affected thereby;
 - b. The Work and all materials or equipment to be incorporated therein, whether in storage on or off the site; and
 - c. Other property at the Site or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.
 2. The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until Final Completion of the Work, unless otherwise agreed upon in writing. The Contractor shall designate and assign a responsible member of his organization whose duty shall be the prevention of accidents and the security of the Site for the duration of the Project. The designated Health & Safety Officer shall be present at the Pre-construction Meeting and during Project start-up, and shall make regular visits to the Site no less frequently than once per month during performance of the Work. In addition to such regular, periodic visits, the designated Health & Safety Officer also shall visit the Site as follows: (a) whenever the nature of the Work or the stage of construction calls for the presence of the Health & Safety Officer in connection with the performance of high risk elements, as determined by the Contractor's Health & Safety Plan; and (b) upon prior request by the Owner or the Engineer. The Health & Safety Officer shall have one of the following certification designations: Certified Safety Professional (CSP);

Associate Safety Professional (ASP); Occupational Health and Safety Technician (OHST); or Construction Health and Safety Technician (CHST)

3. The Contractor shall give notices and shall comply with all applicable laws, ordinances, rules and regulations bearing on the safety of persons or property or their protection from damage, injury or loss.
4. The Contractor shall provide and maintain at all times during performance of the Work all necessary and proper safeguards in and around the Work in order to protect all persons working, entering, or visiting in or near the Project from injury or loss, and to protect from theft and vandalism all Work, existing structures and facilities, materials, equipment, tools and personal property located at the Site or stored for use in connection with the Work.
5. The Contractor shall have a Company Safety and Health Program Manual that meets all Federal, State and local safety and health requirements. The Contractor shall provide to all employees a site safety orientation and training course that identifies the site safety rules, regulations, policies, and procedures. In addition, all Federal, State and local safety training that is required, may be performed during the site safety orientation and training course.
6. The Contractor shall maintain Material Safety Data Sheets on the site for all materials supplied by the Contractors and all Subcontractors. The Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.
7. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from Fairfax Water or Engineer, is obligated to act at his discretion and risk to prevent and/or minimize threatened damage, injury, or loss. The Contractor shall give Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is required because of the action taken by the Contractor in response to such an emergency, a written directive will be issued to document the consequences of such action. All costs associated with any such directive are solely the responsibility of the Contractor.

B. Protection:

1. Until final acceptance of the Work by Fairfax Water, the Contractor shall be under an absolute obligation to protect the finished and unfinished Work against any damage, loss, or injury. The Contractor shall take proper precautions to protect the finished and unfinished Work from loss or damage, pending completion and final acceptance of all Work included in the Contract. Such precautions shall not relieve the Contractor from any and all liability and responsibility for loss or damage to the Work occurring before final acceptance by Fairfax Water. Such loss or damage shall be at the risk of and shall be borne by the Contractor, whether arising from acts or omissions of the Contractor or others and whether or not covered by any of the Contractor's insurance. In the event of any such loss or damage, the Contractor promptly shall repair, replace, and make good the Work without extension of time therefore, except as may be otherwise specified. The Contractor shall take special precaution throughout all his operations to guard against fire and shall reduce the amount of flammable materials stored at the Site to the minimum amount consistent with the proper handling and storing of such materials.
2. The provisions of this section shall not be deemed to create any right of action in favor of third parties against the Contractor, Fairfax Water, or the Engineer.

3. Nothing contained herein shall be construed to deny, restrict, or delay in any manner any access or observation on the part of Fairfax Water or the Engineer to any portion of the Work.

ARTICLE 7 - CHANGES IN THE WORK; RECORDS

A. Minor Changes:

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

B. Extra Work:

1. Fairfax Water may, in its sole and absolute discretion, at any time by a Change Order or Work Order, require the performance of such Extra Work as it deems necessary or desirable. The Contractor hereby covenants and agrees to perform such Extra Work on the terms and conditions set forth in the applicable Work Order or Change Order, as the case may be, and hereby waives any claim, suit or cause of action of any nature based, in whole or in part, upon the allegation that any Extra Work ordered hereunder and/or any Work omitted pursuant to Article 7(C) hereof, individually or in the aggregate, constitute a cardinal change to, or other material deviation from, the Contract Documents and/or the Work contemplated thereby.
2. A Change Order or Work Order covering Extra Work will be valid only if issued in writing and signed by Fairfax Water's Authorized Representative, and the Extra Work so ordered must be performed by the Contractor. Any attempt by the Contractor to alter or modify a Change Order or to reserve a claim thereunder shall be void and of no legal effect. Each Change Order, when executed, shall constitute full and final compensation for all matters directly or indirectly related to or arising from the changes to the Work ordered thereby (the "Changed Work"), including, but not limited to, all Overhead and all other direct and indirect costs associated with the Changed Work and any and all adjustments (of whatever nature) to the Contract Sum or to the Contract Period attributable to the Changed Work.
3. The amount of compensation to be paid to the Contractor for any Extra Work so ordered will be determined as follows:

- a. By such applicable unit prices, if any, as are set forth in the Contract; or
 - b. If no such unit prices are set forth, then by a lump sum or other prices mutually agreed upon by Fairfax Water and the Contractor; or
 - c. If no such unit prices are set forth in the Contract and if the parties cannot agree upon a lump sum or other unit prices, then by the actual and reasonable costs in accordance with the general requirements, as represented by the Technical Specifications of the work, as estimated or otherwise determined by the Engineer.
4. Regardless of the manner in which the adjustment to the Contract Sum on account of Extra Work is determined, such adjustment shall be deemed to include all amounts whether direct, indirect or consequential resulting from the performance of the Extra Work, including, but not limited to, all Overhead. The adjustment in the Contract Sum, if any, shall constitute full and mutual accord and satisfaction for all costs related to this change.
 5. Whenever Extra Work is authorized in accordance with Article 7.B.3.c and is planned to be performed by the Contractor hereunder, the Contractor shall provide prior Notice to Fairfax Water and to the Engineer of the time and place for performance of all such Extra Work. Records of Extra Work performed hereunder, if any, must be submitted by the Contractor at the end of each day to Fairfax Water and to the Engineer. Duplicate copies of accepted records shall be made and signed by both the Contractor or his representative and Fairfax Water and Engineer, and one copy shall be retained by each. Failure of the Contractor to submit (and to obtain signed acknowledgments for) such extra Work records, as specified, shall constitute a waiver and release of the Contractor's right to claim compensation for such extra Work
 6. Payment requests for approved and duly authorized Extra Work shall be submitted by the Contractor upon a certified statement supported by receipted bills. Such statements shall be submitted for payment by Fairfax Water within 30 days after such Extra Work was performed and in accordance with Article 10 hereof.
 7. The Contractor shall be entitled to an extension of time for Extra Work duly authorized by Fairfax Water only for the number of days required, in the opinion of the Engineer, to complete such Extra Work, and then only if the Contractor has strictly complied with all the requirements of the Contract Documents, including without limitation Article 8, A, C, D, and Article 2, B hereof.
- C. Omitted Work:
1. Fairfax Water may at any time by a written order require the omission of such Contract Work as it may find necessary or desirable in its sole and absolute discretion.
 2. An order for omission of Work will be valid only if signed by Fairfax Water's representative and the Work so ordered must be omitted by the Contractor. The amount by which the Contract Sum will be reduced shall be determined in accordance with the General Requirements.
- D. Audit: Fairfax Water and its Authorized Representatives will, until the expiration of three years from the date of final payment under this Contract, have the right to examine and copy those books, records, documents, papers and other supporting data in the possession or control of the Contractor which involve transactions related to this Contract or which otherwise permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein (the "Records"), and the Contractor hereby covenants to maintain the Records for such time and to deliver the Records to Fairfax Water within 7 days after its receipt of written request. The Contractor agrees that no claim for compensation shall be valid if the Contractor should fail to produce any supporting documentation requested by Fairfax Water under this section.

ARTICLE 8 - TIME PROVISIONS

- A. Contract Period: The Contractor shall complete the Work within Contract Period.
1. The Contractor must commence Work within 10 days after the date stated as the date to proceed in the Notice to Proceed. Time being of the essence with respect to this Contract, the Contractor shall prosecute the Work diligently, using such means and methods of construction as will secure its full and final completion in strict accordance with the requirements of the Contract Documents, and will complete the Work within the Contract Period.
 2. The actual date of Beneficial Use will be established after the required inspections have been conducted in accordance with the Contract Documents and all other contractually required submittals have been reviewed and approved by Fairfax Water and the Engineer.
 - a. When the Contractor considers the Work ready for its intended use, Contractor shall notify Fairfax Water and Engineer in writing that the Work is complete for Beneficial Use.
 - b. 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 appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

C. Extension of Time:

1. The parties to this Contract wish to provide a framework for resolving issues in connection with any delays that may occur on this Project. No extension beyond the date of completion fixed by the terms of the Contract will be effective unless granted in writing, and signed by Fairfax Water. Notice of delay must be given in writing to Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and the Engineer within two days after the commencement of the delay and in strict accordance with the General Conditions. Each such notice shall: (i) be submitted in written, narrative form on the Contractor's letterhead; (ii) be identified as a "Notice of Delay;" (iii) shall describe, in reasonable detail, the nature of the delay encountered; and (iv) shall set forth the date of the commencement of the delay. Neither a schedule update nor meeting minutes shall in any event be deemed to be sufficient, on its own or collectively, to satisfy the notice of requirements set forth in this Paragraph 8.C.1. In case of a continuing cause of delay, only one notice shall be required. The Contractor's application for any extension of time shall be in writing and shall be addressed to Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and the Engineer not more than 20 days after the commencement of the delay. Any such application for extension of time shall: (i) be on the Contractor's letterhead; (ii) describe in reasonable detail the reasons for and causes of the delay; (iii) demonstrate in a clear and convincing fashion the extent to which, if any, the delay impacts the Critical Path for the Project; (iv) contain a justification for each additional day which is requested; and (v) be identified as an "Application for Extension of Time. If the delay should continue for longer than 20 days, the Contractor must submit the substantiation and support for such delay no less frequently than in 20 day increments.
2. If such an application is made, the Contractor shall be entitled to an extension of time for delay in completion of the Work if obstructed or delayed in the commencement, prosecution or completion of any part of the Work on the Critical Path by any act or delay of Fairfax Water, or by acts or omissions of other Contractors on the Project, or by riot, insurrection, war, pestilence, acts of public authorities, fire, earthquakes, or by strikes, or other causes, which causes of delay mentioned in this section, in the opinion of Fairfax Water, are entirely beyond the expectation and control of the Contractor.
3. The Contractor shall, however, be entitled to an extension of time for such causes only for the number of days of delay which Fairfax Water may determine to be due solely and exclusively to such causes and only to the extent that such occurrences actually and adversely impacted the Critical Path for the Project, and then only if the Contractor shall have strictly complied with all of the requirements of these Contract Documents.
4. The Contract Period will be adjusted to account for unusually severe weather conditions that prevent or inhibit the Contractor's performance of any part of the Work that is on the Critical Path indicated on the Schedule (such unusually severe weather conditions referred to herein as "Inclement Weather"). It is the intent of this provision to offset the impact of Inclement Weather with unusually favorable weather conditions that immediately precede and/or follow the occurrence of Inclement Weather. The Contractor shall notify Fairfax Water in writing of the occurrence of Inclement Weather within two days after the onset of such Inclement Weather and shall describe in reasonable detail the type of Inclement Weather encountered by the Contractor and the Critical Path activities of the Work thereby interfered with or interrupted. Such notice shall be submitted to Fairfax Water's Project Manager, Fairfax Water's Manager of Construction Department, and the Engineer in written, narrative form, and not in the form of a schedule update. The Engineer and Fairfax

Water will determine the Contractor's entitlement to an extension of the Contract Period for Inclement Weather by adding to the beginning and the end of the period of Inclement Weather a number of days equal to the total number of days of Inclement Weather (the "Inclement Period"), but in no event fewer than 15 days and comparing the Inclement Period with the identical period for the five years preceding the Inclement Period (the "Comparison Period") based upon the accumulated record monthly or daily mean values (the choice of monthly or daily values being made by the Engineer in his sole and absolute discretion) from climatological data compiled by the U.S. Department of Commerce National Oceanic and Atmospheric Administration for Washington-Dulles International Airport or Washington National Airport, whichever is closest to the Project; provided, however, that in no event shall the Inclement Period include days outside the Contract Period. The Contractor shall be entitled to an extension of the Contract Period only in the event and to the extent that the total number of days of Inclement Weather during the Inclement Period exceeds the total number of days of similar types of weather conditions during the Comparison Period.

5. In the event the Contractor is denied an extension of time hereunder, he may contest such decision by submitting written notice to Fairfax Water's Director of Planning and Engineering (with copies to Fairfax Water's Manager of Construction Department, Fairfax Water's Project Manager) and to the Engineer within five days after the issuance of such denial, stating in detail his reasons for disagreement and submitting all information referenced in clauses (iii) and (iv) of Paragraph 3.E.1. of these General Conditions. The Contractor shall provide the Engineer and Fairfax Water with all substantive information that supports the Contractor's claim for an extension of time, together with any supplemental information requested by the Engineer and/or Fairfax Water. The Contractor must address all elements of Fairfax Water's denial of such time extension. No claim for Extra Time under this provision will be valid (and will be deemed to have been waived) unless submitted in strict accordance with the requirements set forth herein.
6. Except as otherwise provided in paragraph 8.C.8, delays caused by the failure of the Contractor's materialmen, manufacturers, and dealers to furnish approved shop drawings, materials, fixtures, equipment, appliances, or other fittings on time or the failure of Subcontractors to perform their Work in conformity with the approved progress schedule shall not constitute a basis for extension of time.
7. Except as expressly set forth in paragraph 8.C.8. hereof, no claim for payment, compensation or adjustment of any kind (other than the extensions of time provided for herein) shall be made or asserted against the Owner by the Contractor for costs or damages caused by hindrances or delays from any cause, whether such hindrances or delays be avoidable or unavoidable, and the Contractor shall make no claim for damages by reason of any such hindrances or delays, and will accept in full satisfaction of such hindrances or delays an extension of time to complete performance of the Work as specified.
8. Notwithstanding the provisions of paragraph 8.C.7., nothing contained herein is intended to, or shall have the effect of, waiving, releasing or extinguishing any rights of the Contractor to recover costs or damages for an unreasonable delay in performing this Contract, either on its behalf or on behalf of a Subcontractor, if and to the extent that such delay is caused by acts or omissions of Fairfax Water, its agents or employees, and due to causes within their control (such a delay referred to herein as an "unreasonable delay"). In order to seek costs or damages in connection with any such unreasonable delay, the Contractor must comply fully with each of the requirements set forth in paragraph 8.C.1. hereof, and shall identify each notice of delay and application for extension of time submitted hereunder, respectively, as a "Notice of Delay and Additional Costs" and as an "Application for Extension of Time and Additional Costs." Each Notice of Delay and Additional Costs shall contain, in addition to the requirements set forth in paragraph 8.C.1.:
 - (i) a description of the nature of the monetary loss or damage associated with the

unreasonable delay; (ii) an explanation as to why the delay is deemed to be "unreasonable;" and (iii) a clear demonstration of how such unreasonable delay was caused solely and exclusively by acts or omissions of Fairfax Water, its agents and employees, and due to causes within their control. In addition to the requirements set forth in paragraph 8.C.1., each Application for Extension of Time and Additional Costs shall demonstrate in a clear and convincing fashion: (i) that the delay was "unreasonable;" and (ii) the extent, if any, to which the delay was caused by acts or omissions of Fairfax Water, its agents or employees, and due to causes within their control. In the event it is determined that the Contractor (either on its behalf or on behalf of a Subcontractor) is entitled to costs or damages on account of such an Owner-caused unreasonable delay, the amount thereof shall be determined as set forth in paragraph 8.C.9.

9. The parties recognize the difficulty in calculating damages suffered by the Contractor as a result of an unreasonable delay. As such, the parties hereby agree that the amount set forth in the Supplemental Conditions (Section 00800) shall be the liquidated damages for each and every day that the Contractor (either on its behalf or on behalf of a Subcontractor) and/or any Subcontractor(s) incurs compensable costs or damages for unreasonable delays in performing this Contract as aforesaid, and that this figure represents a reasonably accurate forecast of the daily aggregate, anticipated actual damages in the event of an unreasonable delay. The parties hereby acknowledge and agree that the liquidated damages provided for hereunder represent full and final compensation for all losses, costs and damages incurred in the aggregate by the Contractor and its Subcontractors (if any) in connection with an unreasonable delay and that neither the Contractor nor any Subcontractor will in any event submit a claim or seek further or additional compensation in excess of the stated amount. The Contractor shall include in each of its subcontract agreements for the Project a liquidated damages provision similar to that set forth herein.
 10. In the event that the Contractor makes a claim against Fairfax Water for costs or damages due to unreasonable delays caused by Fairfax Water, its agents and/or employees and such claim is determined to be false or to have no basis in law or otherwise is resolved in favor of Fairfax Water, in whole or in part, then the Contractor shall be liable to Fairfax Water for a percentage of all the costs Fairfax Water incurs in investigating, analyzing, negotiating, and litigating the claim. The percentage for which the Contractor shall be liable shall be equal to the percentage of the Contractor's total delay claim that is determined through litigation or administrative procedures to be false or to have no basis in law or otherwise resolved in favor of Fairfax Water.
 11. Any claim by the Contractor (either on its behalf or that of any Subcontractor or both) arising from or in connection with a delay that is not first submitted in accordance with the requirements of Article 8 shall be null and void and deemed to have been waived by the claimant.
- D. Progress Schedule: The Contractor shall comply with the Schedule requirements as outlined in the General Requirements.

ARTICLE 9 - CONTRACTOR'S DEFAULT AND TERMINATION

- A. Default by Contractor:
1. In the event:
 - a. the Contractor fails to begin the Work when required to do so; or
 - b. at any time during the progress of the Work it shall appear that the Contractor is not prosecuting the Work with reasonable speed, or is delaying the Work unreasonably or unnecessarily; or

- c. the force of workmen or quality or quantity of material furnished is not sufficient to insure completion of the Work within the specified time and in accordance with the Specifications; or
- d. the Contractor fails to make prompt or proper payments for materials or labor or to Subcontractors for Work performed under the Contract; or
- e. the Contractor fails in any manner of substance to observe the provisions of this Contract; or
- f. any of the Work, or any of the machinery, supplies or equipment provided hereunder is defective and is not replaced as herein provided;

then Fairfax Water, without prejudice to any other rights or remedies it may have hereunder, will have the right to declare the Contractor in default in whole or in part. In the event that Fairfax Water elects to declare the Contractor in default, Fairfax Water shall notify the Contractor by written notice describing the nature of the default and providing the Contractor a right to cure such default within 3 days after the date of notice, or within such longer period as Fairfax Water, in its sole discretion, will determine. In the event the default is not cured within three days after the date of the notice, or within such longer time period specified by Fairfax Water, Fairfax Water will have the right to take any actions necessary to correct or complete the Work, as set forth in this Article 9.

B. Contractor's Duty upon Default:

- 1. Immediately, but no later than three days after receipt of notice that he is in default hereunder, the Contractor shall discontinue all further operations on the Project or specified part thereof, shall immediately vacate the Site or such part thereof, leaving untouched all plant, materials, equipment, tools, supplies and job site records, and shall cooperate fully with Fairfax Water by providing Fairfax Water with any keys or access devices used to gain entry to the Site.

C. Completion of Work after Default:

- 1. If the Contractor does not cure the default or comply with these provisions, Fairfax Water, three days after declaring the Contractor in default, may have the Work completed or the defective equipment or machinery replaced, or anything else done to complete the Work in accordance with the Contract Documents by such means and in such manner, by contract with or without public letting, or otherwise as it may deem advisable, utilizing for such purpose, without additional cost to Fairfax Water, such of the Contractor's plant, materials, equipment, tools and supplies remaining on the Site, and also such subcontractors as it may deem advisable and may take any or all of the following actions:
 - a. delete part or parts of the Work from the Contract and contract to have it performed by others;
 - b. supplement the Contractor's work force;
 - c. withhold payments due the Contractor and use such payments to satisfy any claims for monies owed by the Contractor in connection with the Project, in accordance with paragraph 10.C.2;
 - d. replace or repair any defective Work, machinery or equipment;
 - e. terminate the Contractor pursuant to Item 9.F.1.h.

2. The Contractor and his Surety shall bear all costs associated with completing or correcting the Work, including without limitation, the cost of re-letting, the amount of any liquidated damages, and any and all costs incurred in connection with the actions listed in this paragraph.
 3. Any costs incurred in connection with completing or correcting the Work will be deducted from the amounts then or thereafter due the Contractor. In the event such amounts are not sufficient to cover the costs incurred in connection with completing or correcting the Work, the Contractor and his Surety shall pay to Fairfax Water the amount of any deficiency.
 4. In the event the Contractor or the Surety fails to pay Fairfax Water the costs specified in this Article, the Contractor and the Surety shall be jointly and severally liable for all costs, expenses and attorney fees incurred by Fairfax Water in collecting the amounts due.
 5. In the event of termination for default, Fairfax Water may direct that the Contractor, or one or more of its Subcontractors, or both, be barred from the Project Site and not be permitted to perform further Work. In fulfilling its obligations under the Performance Bond, the Surety shall accept and abide by such direction without additional cost to Fairfax Water.
- D. Partial Default: In the event Fairfax Water declares the Contractor in default with respect to a part of the Work in accordance with the provisions of paragraph 9.A hereof, the Contractor shall discontinue such part of the Work declared in default, shall continue performing the remainder of the Work in strict conformity with the terms of the Contract, and shall not hinder or interfere with any other contractor or persons whom Fairfax Water may engage to complete the Work for which the Contractor was declared in default. The expense of such completion shall be paid by the Contractor and his Surety as hereinbefore stated.
- E. Death or Incompetence of Contractor: In the event of the death or legal incompetence of a Contractor who shall be an individual or surviving member of a sole proprietor contracting firm, such death or adjudication of incompetence shall not terminate the Contract, but shall constitute a default hereunder to the effect provided in paragraph 9.A hereof, and the estate of the Contractor and his Surety shall remain liable hereunder to the same extent as though the Contractor had lived. Notice of default, as provided in paragraphs 9.A hereof, shall not be required to be given in the event of the death or adjudication of incompetence of a Contractor who is an individual or a sole proprietorship.
- F. Fairfax Water's Right to Terminate for Cause:
1. In the event:
 - a. legal proceedings have been instituted by others than Fairfax Water in such manner as to interfere with the progress of the Work and to potentially subject Fairfax Water to the peril of litigation or outside claims; or
 - b. the Contractor is adjudicated bankrupt or makes an assignment for the benefit of creditors; or
 - c. in any proceeding instituted by or against the Contractor an order is made or entered granting an extension of the time of payment, composition, adjustment, modification, settlement or satisfaction of his debts or liabilities; or
 - d. a receiver or trustee is appointed for the Contractor or the Contractor's property; or

- e. the Contract or any part hereof is sublet without the prior written consent of Fairfax Water or
- f. this Contract or any rights, monies, or claims hereunder are assigned in whole or in part by the Contractor, otherwise than as herein specified; or
- g. the Work to be performed under this Contract is abandoned;
- h. the Contractor fails to cure any default declared pursuant to Article 9.A within the time period specified with respect thereto;

then Fairfax Water, without prejudice to any other rights or remedies of Fairfax Water, will have the right to terminate the Contractor for cause effective immediately upon Notice to the Contractor.

- 2. If, after issuance of a Notice of termination of the Contract under the provisions of this Section 9.F.1., it is determined for any reason that the Contractor was not in default under the provisions of paragraph 9.A.1.a through 9.A.1.f, or that cause for such termination otherwise did not exist under the provisions of paragraph 9.F.1.a through 9.F.1.h, then the rights and obligations of the parties shall be the same as if the Notice of termination had been delivered under the provisions of Section 9.G hereof; provided, however, that the Contractor in such event shall be deemed to have received seven days prior Notice of termination. Any compensation thereupon owing to the Contractor under Section 9.G shall be offset by the cost of remedying any defective Work by the Contractor. In no event shall the Contractor be entitled to recover consequential damages of any kind in connection with any termination under Article 9.

- G. Fairfax Water's Right to Terminate for Convenience: Fairfax Water will have the right to terminate this Contract at its own convenience for any reason by giving seven days prior notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the lesser of: (1) the actual cost of any Work, labor or materials actually performed or in place and the actual cost of any labor, equipment or materials ordered in good faith which could not be canceled, less the salvage value thereof; or (2) the pro rata percentage of completion based upon the bid breakdown furnished by the Contractor, plus the actual cost of any labor, equipment, or materials ordered in good faith which could not be canceled, less the salvage value thereof. Each subcontract shall contain a similar termination provision for the benefit of the Contractor and Fairfax Water. Neither the Contractor nor any Subcontractor shall be entitled to receive anticipated profits on unperformed portions of the Work. Fairfax Water (or its Authorized Representative) will have the right to verify any amounts claimed by the Contractor to be due under this Section. The Contractor shall grant Fairfax Water (or its Authorized Representative) access, during normal business hours, to its books, records and contracts, insofar as they pertain to amounts claimed to be due hereunder.

ARTICLE 10 - PAYMENT

A. Prices:

- 1. For the Contractor's complete performance of the Work, Fairfax Water agrees to pay, and the Contractor agrees to accept, subject to the terms and conditions hereof, the lump sum prices or unit prices in the Contractor's bid and the award made thereon, taking into consideration any deductions based on award of a combination of Divisions, if applicable, plus the amount required to be paid for Extra Work ordered under Section 7.B hereof, less credit for any Work omitted pursuant to Section 7.C hereof.
- 2. Under unit price items, the number of units actually required to complete the Work under the Contract may be less or more than stated in the bid. The Contractor agrees that no claim will be made for any damages or for loss of profits or overhead because of a

difference between the quantities of the various classes of Work assumed and stated in the bid as a basis for comparing bids and the quantities of Work actually performed.

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

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

deemed payments for the account of the Contractor and will reduce Fairfax Water's indebtedness to the Contractor accordingly.

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

D. Final Payment:

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

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

- F. Acceptance of Final Payment: The acceptance by the Contractor, or by anyone claiming by or through him, of the final payment shall be deemed to constitute a release to Fairfax Water and every officer and Authorized Representative thereof from any and all claims, disputes and liabilities to the Contractor for anything done or furnished in connection with the Work or the Project. However, no payment, final or otherwise, shall operate to release the Contractor or his Surety from any obligations under this Contract.

G. Payments to Subcontractors:

1. Within seven days after receipt of each payment from Fairfax Water, the Contractor shall:
 - a. Pay each Subcontractor an amount equal to the proportionate share of the total payment received from Fairfax Water attributable to Work performed by such Subcontractor (giving effect to the percentage of payments to be retained by Fairfax Water from amounts due the Contractor); or
 - b. Notify Fairfax Water, the Engineer and the Subcontractor in writing of the intention to withhold all or part of the amounts due the Subcontractor pursuant to paragraph 10.G.1.a above, and state the reason for such withholding.
2. Each subcontract entered into by the Contractor in connection with the Work shall: (a) obligate the Subcontractor to include its social security number or federal employer identification number, as the case may be, on all applications for payment; and (b) obligate each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor as are required of the Contractor hereunder.
3. The Contractor shall pay interest on amounts owed to the Subcontractor which remain unpaid seven days after the Contractor's receipt of payment from Fairfax Water, provided, however, that amounts owed the Subcontractor which have been withheld properly, pursuant to Paragraph 10.G.1.b, shall not accrue interest. Interest on amounts due the Subcontractor and unpaid shall accrue at the rate of one percent per month; provided, however, that the Contractor's obligation to pay interest hereunder shall in no event be construed to be an obligation of Fairfax Water. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for such interest charge.

H. Payment Terms: Fairfax Water shall pay the Contractor amounts due within 45 days of approval hereunder. Past due amounts shall accrue interest at the rate of one percent per month.

ARTICLE 11 - INSURANCE

A. Contractor's Insurance:

1. During the term of this Contract, the Contractor shall procure and maintain, with solvent and responsible companies authorized to do business under the laws of the Commonwealth of Virginia and acceptable to Fairfax Water, the following types of insurance:
 - a. Commercial General Liability and Property Damage Insurance covering claims for damages, for bodily injury, including accidental death, personal injury, products and completed operations, as well as claims for property damage which may arise from operations under the Contract, whether such operations be performed by the Contractor or by any Subcontractor, or by anyone directly or indirectly employed by either of them. Such insurance includes coverages "X", "C" and "U" for explosion, collapse of other structures and underground utilities, and Contractual Liability Insurance covering the requirements outlined in the General Conditions. This insurance shall name Fairfax Water and the Engineer as additional insureds and shall protect Fairfax Water and the Engineer against similar claims. If endorsements to the Commercial General Liability insurance policies cannot be made, then separate policies providing such protection shall be purchased by the Contractor. Policy shall be subject to a \$5,000,000 combined single limit per person/occurrence. This insurance shall include coverage for all of the following:

- 1) General aggregate limit applying on a per project basis;
 - 2) Liability arising from premises and operation;
 - 3) Liability arising from the actions of independent contractors;
 - 4) Liability arising from products and completed operations with such coverage to be maintained for two years after completion of the Work;
 - 5) Contractual liability including protection for the Contractor from bodily injury and property damage claims arising out of liability assumed under this Contract; and
 - 6) Liability arising from the explosion, collapse, or underground (XCU) hazards.
- b. The Contractor shall require each of his Subcontractors to procure and maintain during the term of his subcontract, subcontractor's commercial General Liability Insurance of the type specified in paragraph 11.A.1.a, in amounts satisfactory to the Contractor.
- c. Worker's Compensation and Employer's Liability Insurance for the Contractor's employees engaged in the Work under this Contract, in accordance with the laws of the Commonwealth of Virginia. The Contractor shall require each of his Subcontractors to provide Worker's Compensation and Employer's Liability Insurance for all of the Subcontractor's employees engaged on such subcontracts. If any class of employees engaged on work under the Contract is not protected under the Worker's Compensation statute, the Contractor shall provide similar protection for these employees in amounts not less than the legal requirements. The amount of Employer's Liability Insurance for the Contractor and each of his Subcontractors shall be not less than \$100,000 per employee for Bodily Injury. The Worker's Compensation and Employer's Liability Insurance policy shall include an "all states" or "other states" endorsement
- d. Automobile Liability Insurance, including employee's ownership liability and hired automobile insurance, \$1,000,000 combined single limit.
- e. All risk insurance covering damage, loss or injury to the Work. The policy shall be payable to Fairfax Water, and the proceeds thereof, when paid, will be retained by Fairfax Water as security for the performance by the Contractor of his obligations under the terms and conditions of this Contract and, upon such performance, will be released to the Contractor. The policy shall be in an amount equal to the Contract Sum and shall apply to any and all Projects under construction during the term of this Contract.
- f. Contractor's Pollution Liability covering bodily injury and property damage which may arise from operations under the Contract, whether such operations be performed by the Contractor or by any Subcontractor, or by anyone directly or indirectly employed by either of them. This insurance shall name Fairfax Water and the Engineer as additional insureds and shall protect Fairfax Water and the Engineer against similar claims. Policy shall be subject to a minimum \$5,000,000 combined single limit per person/occurrence. Policy must be written on an occurrence form, and will remain in effect until Acceptance, and ensure that completed operations coverage is provided for a period of no less than 2 years after Acceptance. This insurance shall include coverage for all of the following:

- 1) Bodily injury and property damage to third parties;
- 2) Natural resource damages;
- 3) Environmental cleanup including restoration or replacement costs;
- 4) Legal defense;
- 5) Transportation of waste material by or on behalf of the Contractor away from the Project Limits;
- 6) Disposal liability for pollution conditions on, at, under, or emanating from any disposal site, location or facility used by or on behalf of the Contractor for disposal of waste;
- 7) Waiver of Subrogation for all claims and suits, including recovery of any applicable deductibles; and
- 8) Severability of Interest/Separation of Insureds.

This insurance shall not contain any exclusions or limitations for:

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

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

2. Proof of insurance for each type of coverage listed herein shall be provided within 10 Days after issuance of the Award Letter for the Contract, and no Work shall proceed unless all such insurance is in effect. The Contractor shall not allow any Subcontractor to commence work on his subcontract until all such insurance of the Subcontractor has been so obtained and approved by the Contractor and found to be in accordance with the requirements set forth herein. The Contractor certifies by commencement of the Work that his insurance and that of Subcontractors is in effect and meets the requirements set forth herein.
3. The Contractor shall purchase and maintain required liability and all other insurance as is appropriate for the Work being performed and furnished. The insurance shall provide protection from claims set forth herein which may arise out of or result from Contractor's performance and furnishing of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:
 - a. claims under worker's compensation, disability benefits, and other similar employee benefit acts;
 - b. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
 - c. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;

- d. claims for damages insured by personal injury liability coverage which are sustained: (1) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor; or (2) by any other person for any other reason;
 - e. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
 - f. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.
4. The insurance required to be purchased and maintained by the Contractor shall:
- a. include completed operations insurance;
 - b. with respect to completed operations insurance and any other insurance coverage written on a claims-made basis, remain in effect for at least 2 years after final payment (and Contractor shall furnish Fairfax Water and Engineer evidence satisfactory to Fairfax Water of continuation of such insurance at final payment and 1 year thereafter);
 - c. contain a cross liability or severability of interest clause or endorsement. Insurance covering the specified additional insureds shall be primary insurance, and all other insurance carried by the additional insureds shall be excess insurance.
5. Each of the foregoing insurance policies must be endorsed to provide that the insurance company shall give 30 days written notice to Fairfax Water if the policies are to be terminated or if any changes are made during the Contract Period which will affect in any way the insurance requirements set forth herein. Before commencing the Work, the Contractor shall provide Fairfax Water with a copy of each policy which he and each of his Subcontractors shall carry in accordance herewith, together with receipted bills evidencing proof of premium payment.
6. If at any time Fairfax Water becomes dissatisfied with any insurance company which provides required insurance coverage on behalf of the Contractor, or if for any other reason such required insurance coverage shall cease to provide adequate protection to Fairfax Water, as determined by Fairfax Water in its sole discretion, then the Contractor shall, within ten days after receipt of written notice from Fairfax Water, substitute one or more acceptable insurance companies and or insurance policies as may be satisfactory to Fairfax Water. The premiums on such insurance shall be paid by the Contractor and shall be included in the Contract Sum. No further partial payments shall be deemed due or be made until the new insurance coverage shall have become effective.
- B. Nothing contained herein shall effect, or shall be deemed to affect, a waiver of Fairfax Water's sovereign immunity under law.

ARTICLE 12 - CONTRACT SECURITY

A. Contract Security:

- 1. The Contractor shall execute and deliver to Fairfax Water Performance and Payment Bonds on the forms provided herein, each in an amount equal to the Contract Sum, and each accompanied by an appropriate Power of Attorney evidencing the authority of the Surety's representative to execute such Bond on behalf of the Surety. Each Performance and Payment Bond shall be issued by a solvent and responsible surety company that is

authorized to conduct business in the Commonwealth of Virginia, named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and acceptable to Fairfax Water. The Performance and Payment Bonds shall serve as security for the faithful performance of this Contract, and for the payment of all persons performing labor and furnishing materials and services in connection with this Contract. The premiums on the Performance and Payment Bonds shall be paid by the Contractor and shall be included in the Contract Sum.

2. If at any time Fairfax Water becomes dissatisfied with any Surety or Sureties upon the Performance and Payment Bonds, or if for any other reason such bond shall cease to be adequate security for Fairfax Water, as determined by Fairfax Water in its sole discretion, the Contractor shall within five days after notification, substitute acceptable bonds in such form and sum and signed by such other sureties as may be satisfactory to Fairfax Water. The premiums on such Bonds shall be paid by the Contractor and shall be included in the Contract Sum. No further partial payments shall be deemed due or be made until the new sureties have qualified.
3. Notwithstanding any provisions in these Contract Documents to the contrary, the Contractor may furnish Fairfax Water with a certified check, cashier's check, or cash escrow in the amount of the Contract Sum in lieu of the payment bond, the performance bond, or both.

ARTICLE 13 - SUBCONTRACTS AND ASSIGNMENTS

A. Limitations and Consent:

1. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Contract or of his right, title, or interest therein, in whole or in part, or any claim allegedly arising herefrom and shall not assign any monies due or to become due hereunder to any other person, firm or corporation without first obtaining the written consent of Fairfax Water. Fairfax Water's consent to a particular subcontract or assignment will not constitute a waiver of Fairfax Water's right to consent to any further or other subcontracts or assignments.
2. Before making any subcontract, the Contractor must submit a written statement to the Engineer setting forth the name and address of the proposed Subcontractor and the portion of the Work and materials which the proposed Subcontractor shall perform or provide, as the case may be. The Contractor also must furnish with respect to each proposed Subcontractor an OSHA Form 300 [a list of citations for safety violations] and a completed "Subcontractor Qualification Form" attached to these General Conditions, all intended to demonstrate to Fairfax Water that the proposed Subcontractor has the necessary facilities, skill, integrity, safety record, past experience and financial resources to perform the Work in accordance with the terms and conditions of this Contract. A Subcontractor Qualification Form must be submitted for each subcontractor performing work valued greater than \$100,000 and the OSHA Form 300 shall be submitted at the time the Subcontractor Qualification Forms are submitted. As to each proposed Subcontractor, the Contractor has the burden of demonstrating that the Subcontractor is qualified in all respects to perform the designated portion of the Work. Unless additional or trade-specific subcontractor qualifications are required in the Contract Documents, the Contractor must, at a minimum, demonstrate to the satisfaction of Fairfax Water that the proposed Subcontractor has successfully performed similar work on a project which is similar in size, scope, and nature to the Project. The Engineer shall advise Fairfax Water of its opinion and recommendation with regard to each proposed Subcontractor.

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

ARTICLE 14 - INDEMNIFICATION

- A. Suits at Law: The Contractor hereby assumes all liability for and will indemnify and hold harmless Fairfax Water and the Engineer and its or their officers, Members, Authorized Representatives and employees (any one of which is an "Indemnified Party") against any and all claims, losses, costs, damages, penalties, liabilities and fees (including reasonable attorneys' fees) and expenses resulting from: (i) any material breach of the representations, warranties, agreements and covenants of the Contractor contained in the Contract Documents; (ii) any injuries to persons or property caused by the wrongful conduct or alleged wrongful conduct of the Contractor or his Subcontractors, employees, or authorized representatives; (iii) any claims filed by the Contractor which are adjudicated in favor of Fairfax Water; or (iv) in any other manner arising out of the performance of this Contract.
- B. In the event that a claim is brought against an Indemnified Party by: (a) the Contractor or an employee of the Contractor; (b) any Subcontractor or supplier or any employee thereof; (c) any person or entity engaged by or through the Contractor or any Subcontractor or supplier to furnish or perform any portion of the Work; or (d) any person or entity for whom the Contractor or any Subcontractor or supplier may be vicariously liable, the indemnification obligations set forth in Paragraph 14.A. shall not be limited in any respect by any limitation on the type or amount of

damages, compensation, benefits or other remuneration payable by or for the Contractor or any Subcontractor, supplier or other such person or entity under any laws, rules, regulations or plans of any nature governing workers' compensation, disability benefits or other employee benefits.

- C. Claims on Behalf of Subcontractors: No claim of any nature shall be made against Fairfax Water by or on behalf of a Subcontractor unless the Contractor first shall have: (i) evaluated such claim thoroughly and determined it to be meritorious; (ii) issued a written notice to the Subcontractor finding the Subcontractor's claim to be meritorious and setting forth any additional compensation or additional days to be paid or granted to the Subcontractor on account of such claim; and (iii) paid the Subcontractor in full for such claim. In presenting such a claim, the Contractor shall provide Fairfax Water with a copy of the written notice to the Subcontractor and with evidence of payment in full of the Subcontractor's claim. No such claim shall exceed the amount actually paid to the Subcontractor by the Contractor.
- D. Liability Unaffected: Nothing herein contained shall in any manner create any liability against Fairfax Water on account of any claim for labor, services, or materials, or of subcontractors, and nothing herein contained shall affect the liability of the Contractor or his Sureties to Fairfax Water or to any workmen or materialmen upon bonds given in connection with this Contract. The Contractor hereby acknowledges and agrees that, as between Fairfax Water and the Contractor, the Contractor shall bear full and complete responsibility for the performance of its Subcontractors, manufacturers and suppliers, regardless of whether any such Subcontractor, manufacturer or supplier was designated as "preapproved" by Fairfax Water.

ARTICLE 15 - POWERS OF FAIRFAX WATER'S REPRESENTATIVES

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

except where the reviews or approval of someone other than the Engineer is expressly called for herein and except where subject to review by Fairfax Water's Authorized Representative.

3. Neither the Engineer's authority to act hereunder nor any decision made by him in good faith to exercise or not to exercise such authority will give rise to any duty or responsibility of the Engineer to the Contractor, or to any Subcontractor, any materialman, fabricator, supplier or any of their authorized representatives or employees or any other person or entity performing any of the Work.
4. The Engineer will not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of his or their representatives or employees or any other persons at the Site or otherwise performing the Work.
5. The Engineer will not be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto. Furthermore, the Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.
6. Any requirement, direction, review, or judgment given by the Engineer is intended solely to evaluate the Work in order to determine compliance with the Contract Documents. Nothing contained in the Contract Documents and no act or omission on the part of Fairfax Water, the Engineer or their Authorized Representatives will imply that the Engineer has any authority or responsibility to supervise or direct the means and methods of the performance of the Work.

B. The General Manager:

1. The General Manager, in addition to those matters expressly made subject to his determination, direction or approval will have the power:
 - a. To decide any and all questions, claims and disputes in relation to this Contract and its performance, except as herein otherwise specifically provided.
 - b. To modify or change this Contract in accordance with Article 7, B.1. so as to require the performance of Extra Work, or the omission of Contract Work or both, whenever he deems it in the interest of Fairfax Water to do so.
 - c. To suspend the whole or any part of the Work whenever in his judgment, such suspension is required: (1) in interest of Fairfax Water generally, or (2) to coordinate the work of the various contractors engaged on the Project or (3) to expedite the completion of the Project, even though the completion of this particular Contract be thereby delayed, or (4) due to a delay caused by Fairfax Water, Engineer or its or their Authorized Representatives, without compensation to the Contractor for such suspension except for actual costs of demobilization and remobilization, as noted in the General Requirements and other than extending the time for completion of the Work, as much as it may have been, in the opinion of Fairfax Water, delayed by such a suspension.
 - d. To take over, use, occupy, or operate any part of the completed or partly completed Work if, before the final acceptance of the Work, the General Manager will deem it necessary.

C. Project Documents

1. Access to Documents: Fairfax Water and any of its Authorized Representatives shall have access to all records and documents in the possession, custody, control or ownership of the Contractor relating in any way to the Project (the "Project Documents"). The Project Documents shall include, but not be limited to, the following: bid worksheets, daily reports, invoices, sub-contracts, internal memoranda, notes and other data. Fairfax Water and its Authorized Representatives shall, at any time during the term of this Contract and until the expiration of 3 years from the date of final payment under this Contract, have the right to examine and copy the Project Documents, and the Contractor hereby covenants to maintain the Project Documents for such time and to deliver the Project Documents to Fairfax Water within 7 days after receipt of its request.

ARTICLE 16 - BOUNDARIES

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

ARTICLE 17 - WARRANTIES

A. Warranties

1. During the Warranty Period (as defined below), The Contractor warrants to the Owner as follows (collectively, the "Warranties"): (a) the Work shall be free of defects in workmanship, materials and/or equipment, (b) materials and equipment furnished under the Contract Documents shall be of good quality and new (unless otherwise specified in the Contract Documents), (c) the Work will be free of all shrinkage, settlement or other faults of any kind or nature which are attributable to defective workmanship, materials and/or equipment (d) the Work shall strictly conform to and meet all of the requirements of the Contract Documents; and (e) the Work shall be fit for use in accordance with its intended function.
2. The foregoing Warranties shall commence on the Date of Final Completion and, unless a different period of time is specified herein, shall remain in effect for a period of one year. If any of the Work fails to meet the standards set forth in this Article at any time within the applicable warranty period, then the Contractor shall correct such Work promptly after receipt of written notice from the Owner. The Contractor promptly shall correct such Work to meet the standards of this Article, and shall repair (to such standards) any damage to the Project or other property of the Owner caused by the failure of the Work to meet the standards set forth in this Article, even if the performance of such corrective work or repairs extends beyond the applicable warranty period. This obligation shall survive acceptance of the Work by the Owner and termination of the Contract Documents.
3. The Contractor shall provide Fairfax Water with a written extended warranty for any equipment, system, system component, or any other component of the Work that has not been shown to perform to the full satisfaction of the Owner or that has been the subject of repeated service calls or repairs during the applicable Warranty Period. Any such extended warranty shall be for a minimum of one year or such other length of time as deemed acceptable to Fairfax Water.
4. In order to make good the guarantee as herein required, the Contractor shall deposit with the Owner, before Final Payment or release of retainage, a Maintenance Bond issued by a surety licensed to do business in Virginia and otherwise acceptable to Fairfax Water, for the full and faithful performance of the Warranties. The Maintenance Bond shall be: (a) for a period of time equivalent to the applicable warranty period; (b) in the amount of five percent (5%) of the final Contract Sum; and (c) in substantially the form attached as an exhibit to these

General Conditions. Additional maintenance bonds may be required for any equipment, system, system component, or any other component of the Work that are subject to an extended warranty in accordance to Article 17.A.3.

5. Within three (3) Days after receipt by the Contractor of notice specifying a failure of any of the Work to satisfy the Contractor's Warranties, the Owner will consult with the Contractor to determine when and how the Contractor shall remedy such failure; provided, however, that in case of an emergency requiring immediate curative action, the Contractor shall implement such action as it deems necessary and shall notify the Owner of the urgency of an expedited decision by the close of the following Business Day. The Contractor and the Owner shall agree on such remedy as soon as reasonably practicable. If the Contractor does not use diligent efforts to proceed promptly to effectuate such remedy within the agreed time, or should no such agreement be reached within such 3-Day period (or immediately, in the case of emergency conditions), the Owner, after notice to the Contractor, shall have the right to perform or have performed by third parties the necessary remedy, and the costs thereof shall be borne by the Contractor. In the event the Owner performs or causes to be performed such corrections and repairs, then the Contractor shall reimburse the Owner for all costs associated therewith within 7 Days after written demand from the Owner.
6. The Contractor shall bear all costs of correcting any Work that fails to meet the standards set forth in this Article, including additional testing and inspections, and shall be responsible for all costs associated with the repair of any damage to the Project or to the property of the Owner or of Work performed by Separate Contractors caused by such failure.
7. The Contractor's Warranties shall apply to all corrected and/or repaired Work performed hereunder. The Warranties with respect to such Work shall remain in effect with respect to each corrected and/or repaired element of the Work until the later of: (a) one year after acceptance by the Owner of such corrected and/or repaired Work; or (b) expiration of the applicable Warranty period as set forth in Section A(2) above.
8. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one year Warranty period specified in Section A(2) above relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work if it provides for a longer warranty duration.

ARTICLE 18 - APPLICABLE LAW

- A. Compliance with Laws: The Contractor shall comply with all local, state and federal laws, rules, ordinances and regulations applicable to this Contract and to the Work to be performed hereunder, and shall obtain at his own expense all permits, licenses or other authorizations necessary for the prosecution of the Work (except for Virginia Department of Transportation permits, Fairfax County street permits, building permit(s), easement agreements for the Project) and shall protect and indemnify Fairfax Water and the Engineer and their employees, Members, officers and Authorized Representatives against any claim or liability arising from or based on the violation of any such laws, rules, ordinances and regulations, whether by himself, his employees, or his Subcontractors.
- B. Legal Provisions Deemed Included: Each and every provision of any law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party the Contract shall forthwith be physically amended to make such insertion.

- C. Governing Law and Policy: This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to conflict of law principles.

ARTICLE 19 - NON-DISCRIMINATION

A. Employment Discrimination Prohibited:

1. During the performance of this Contract, the Contractor:
 - a. Shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. Will state that he is an equal opportunity employer in all solicitations or advertisements for employees placed by or on behalf of the Contractor.
 - c. Accepts that all notices, advertisements and solicitations placed in accordance with federal laws, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character, or impose conditions that (i) restrict the religious character of the faith-based organizations, except as provided by law, or (ii) impair, diminish or discourage the exercise of religious freedom by the recipients of goods, services or disbursements.
2. The Contractor shall include the provisions of the foregoing paragraphs 1.a, b, c and d in every subcontract or purchase order of over \$10,000, in order that the provisions contained therein will be binding upon each such Subcontractor or vendor.

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

A. Character and Competency:

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

3. Alcoholic beverages, firearms and illegal drugs are prohibited on the Site.
- B. **Superintendence:** The Contractor shall have a competent, experienced, and reliable foreman or superintendent, acceptable to Fairfax Water, who shall serve as the Contractor's authorized representative at the site and shall have authority to act on behalf of the Contractor (the "Superintendent"). The Superintendent shall have full authority to supply material and labor immediately. He shall keep on hand at all times copies of the Contract Documents. Notice or communication to the Superintendent shall be equivalent to notice or communication to the Contractor. The Superintendent shall follow without delay all instructions of Fairfax Water in the prosecution and completion of the Work.
 - C. **Payroll Reports:** At the request of Fairfax Water, the Contractor and each Subcontractor shall furnish a duly certified copy of his payroll records as well as any other information required to document the Contractor's compliance with the provisions of the law as to the hours of employment and rates of wages. Neither the Contractor nor his Subcontractors shall include on their payrolls persons not employed by them.
 - D. **Contractor's Warranties:** In consideration of and to induce the award of this Contract to him, the Contractor represents and warrants to Fairfax Water as follows:
 1. He is not in arrears to Fairfax County or to Fairfax Water upon any debt or contract, and he is not in default, as surety, contractor, or otherwise;
 2. He is financially solvent and sufficiently experienced and competent to perform the Work;
 3. The Work can be performed as called for by the Contract Documents;
 4. The facts stated in his Bid and the information given by him is true and correct in all respects;
 5. He is fully informed regarding all the conditions affecting the Work to be performed and labor and materials to be furnished for the completion of this Contract; and that his information was secured by personal investigation and research.
 - E. **Drug-Free Workplace Requirement:** During the performance of the Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For purposes hereof, a "drug-free workplace" shall mean the site for the performance of the Work.

ARTICLE 21 – FREIGHT CLAIMS

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

ARTICLE 22 – TAX EXEMPTION

- A. Although Fairfax Water is exempt from, and will not pay any, federal, state or local taxes which may be applicable to the transactions contemplated by these Contract Documents, including without

limitation any Federal Excise Tax, Transportation Tax or Virginia Sales and Use Tax, nothing contained herein shall be deemed to confer upon the Contractor any rights to or benefits of tax exempt status under federal or state law. The Contractor shall not claim entitlement to the benefits of tax-exempt status based solely upon its contractual relationship with the Owner.

END OF SECTION 00700

**SECTION 00850
FAIRFAX COUNTY WATER AUTHORITY**

**IFB 20-053
REHABILITATION AND REPAIRING OF ANNANDALE RESERVOIRS #1 AND #2**

THIS AGREEMENT, made and entered into this ____ day of _____ 20____, by, between and among the **FAIRFAX COUNTY WATER AUTHORITY** ("FW"), _____ (the "Contractor"), and _____, a trust company, _____ (Name and Address of Bank) bank, or savings institution with a principal office located in the Commonwealth of Virginia (the "Bank") and _____ (the "Surety") provides:

- I. FW and the Contractor have entered into a contract with respect to a _____ (the "Contract"). This Agreement is pursuant to, but in no way amends or modifies the Contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.
- II. In order to assure full and satisfactory performance by the Contractor of its obligations under the Contract, FW is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of FW, elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the Contract or any other instrument or agreement between FW and the Contractor.
- III. FW shall, from time to time pursuant to the Contract, pay the Bank amounts retained by it under the Contract. Except as to amounts actually withdrawn from escrow by FW, the Contractor shall look solely to the Bank for the payment of funds retained under the Contract and paid by FW to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this Contract shall be solely upon the Contractor.

Funds and securities held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien or another process whatsoever. The Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety with notice to FW.

- IV. Upon receipt of checks or warrants drawn by FW and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same, deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.
- V. The following securities, and none other, are approved securities for all purposes of this Agreement:
 - (1) United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills.
 - (2) Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States.
 - (3) Bonds or notes of the Commonwealth of Virginia.
 - (4) Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's Investors Service rating of at least "A", and
 - (5) Certificates of deposit issued by commercial banks located within the Commonwealth of Virginia, including, but not limited to, those insured by the Bank and its affiliates.

- (6) Any bonds, notes, or other evidences of indebtedness listed in Section V. (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the securities themselves, and the securities have the date of the repurchase agreement at a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.
 - (7) No security is approved hereunder which matures more than five years after the date of its purchase by the Bank or deposit by the Contractor.
- VI. The Contractor may from time to time withdraw the whole or any portion of the escrowed funds by depositing with the Bank approved securities in an amount equal to, or in excess of, the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.
- Upon receipt of a direction signed by the General Manager of FW, the Bank shall pay the principal of the fund, or any specified amount thereof, to FW.
- VII. For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor.
- VIII. The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the principal of the fund.
- IX. The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the Contract are not affected hereby.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, FW, the Contractor, the Bank and the Surety have caused their duly-authorized representatives to execute this Escrow Agreement as of the day and year first written above.

FAIRFAX WATER

By: _____
Steven T. Edgemon
General Manager

CONTRACTOR

By: _____
Name: _____
Title: _____

BANK

By: _____
Name: _____
Title: _____

SURETY

By: _____
Attorney-in-fact