



**CITY OF FAIRFAX, VIRGINIA
FAIRFAX CITY HALL, FINANCE DEPARTMENT
SUITE 312, 10455 ARMSTRONG STREET
FAIRFAX, VA 22030
(703) 385-7875**

INVITATION FOR BID NO. 17038

SEALED BIDS WILL BE RECEIVED IN HAND IN THE FINANCE OFFICE, SUITE 312, 10455 ARMSTRONG STREET, FAIRFAX, VIRGINIA 22030, UNTIL **3:00 P.M. ON THE 28TH DAY OF JUNE, 2017** FOR:

**PROVISION OF SKILLED LABOR, SUPERINTENDENCE, EQUIPMENT, MATERIAL AND ALL THINGS
NECESSARY INSTALLATION OF ACCESSIBLE RAMP AND WALL INFILL AT THE BLENHEIM
HISTORICAL HOUSE AND RELATED SITE RESTORATION.**

AT THE TIME, DATE AND PLACE STATED ABOVE, BIDS WILL BE PUBLICLY OPENED.

BID SURETY IN THE AMOUNT OF NOT LESS THAN 5% OF THE BID MUST BE SUBMITTED WITH THE BID. PERFORMANCE AND PAYMENT BONDS IN THE AMOUNT OF 100% OF THE AWARD WILL BE REQUIRED OF THE SUCCESSFUL BIDDER.

IMPORTANT NOTES:

- City of Fairfax reserves the right to reject any and all bids, cancel this solicitation, and to waive any informalities or irregularities in procedure. A bidder's submission of a bid indicates acceptance of these terms.
- In accordance with Code of Virginia § 2.2-4343.1, City of Fairfax does not discriminate against faith-based organizations in the performance of its procurement activity.
- Late, unsealed, and electronic bids will not be accepted.

**CITY OF FAIRFAX, VIRGINIA
FINANCE DEPARTMENT**

Donna Strouth
donna.strouth@fairfaxva.gov
Buyer

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PART ONE - INSTRUCTIONS TO BIDDERS

1. DISTRIBUTION OF SOLICITATION DOCUMENTS

The distribution of this Request for Proposals (RFP), all addenda, and responses to questions will be by posting on the City of Fairfax, Virginia (the "City") website <http://www.fairfaxva.gov> and the Commonwealth of Virginia e-Procurement portal www.eva.gov and publication of a notice in a local newspaper of general circulation. The date and time of posting on the City website shall be the date and time of the official issuance or notification of the IFB or any modification to the solicitation process. It is the responsibility of each bidder to check the City website daily for posted notifications. The City will not consider modification of any date, time frame, or addendum due to late receipt of notification based on subsequent advertisements or posting at any location other than the City website.

2. DEFECTIVE SOLICITATION DOCUMENTS

Each bidder is responsible for having determined the accuracy and /or completeness of the solicitation documents upon which it relied in making its proposal, and has an affirmative obligation to notify the City Buyer immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, drawings, sections, addenda whose omission from the documents was apparent from a reference or page numbering or other indication in the solicitation documents.

If a potential bidder downloaded an electronic version of the solicitation documents, that potential bidder is responsible for determining the accuracy and/or completeness of the electronic documents.

If the successful bidder proceeds with any activity that may be defected by an inaccuracy, error in, or omission in the solicitation documents of which is aware but has not notified the City Buyer, the offeror hereby agrees to perform any work described in such missing or incomplete documents at the bidder's sole expense and at no additional cost to the City.

Failure to acknowledge all addendums issued during the solicitation process on the receipt of addenda form is considered an incomplete proposal document.

3. ERRONEOUS OR OTHERWISE COMPROMISED REQUIREMENTS

Each bidder is responsible for having determined the feasibility of the work required, and shall notify the City Buyer immediately upon any discovery of any apparent erroneous, contradictory, incomplete, or infeasible requirements or directions contained in the Solicitation Documents. If a bidder fails to notify the City of such conditions immediately upon discovery, the bidder assumes all responsibility for any and all work required to satisfy the contract requirements at no additional cost to the City and within the Contract Term.

4. ADDITIONAL INFORMATION

All questions relating to this solicitation shall be submitted via email to **Donna Strouth** in the Finance Department, at donna.strouth@fairfaxva.gov. For a question to be considered, the subject line of the e-mail must state the following: "**IFB No. 17038 Questions**". Questions should be succinct and must include the submitter's name, title, company name, company address, and telephone number. Prior to the award of a contract resulting from this solicitation, bidders are prohibited from contacting City staff other than the Finance Department.

NO QUESTIONS WILL BE CONSIDERED IF THEY ARE SUBMITTED AFTER JUNE 19, 2017 AT 5:00 PM.

If any questions or responses require revisions to this solicitation as it was originally published, such revisions will be by formal amendment only. Bidders are cautioned that any written,

electronic, or oral representations made by any City representative or other person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written amendment to this solicitation issued by the Finance Department.

5. COMPETITION INTENDED

City of Fairfax intends to promote competition for this solicitation, it shall be the bidder's responsibility to advise City of Fairfax if any language, requirements or specifications have the effect of restricting or limiting the purchase to a single source. Such notification must be received by the City of Fairfax Buyer not later than fifteen (15) calendar days prior to the date and time set for bid opening. A review of such notifications will be made and the bidder notified of the results of the review.

6. BID FORM SUBMISSION

The required Bid Form is provided in the solicitation. One (1) fully-completed Bid Form with an original longhand signature, and a photocopy of the signed original (two (2) copies total), shall be submitted by hand, in a sealed envelope or package, to the Finance Department, Suite 312, 10455 Armstrong Street, Fairfax, Virginia, 22030, no later than the date and time deadline specified in the Invitation for Bid above. Timely submission is solely the responsibility of the bidder. Bid Forms received after the specified date and time will be rejected. The exterior of the envelope or package shall indicate the name of the bidder, the scheduled bid opening date and time, and the number of the Invitation for Bid. Bids submitted by facsimile or electronically will not be accepted.

A bidder's failure to submit a bid with a fully-completed Bid Form, using the Bid Form provided in this solicitation, shall be cause for rejection of that bidder's bid. A bid will be rejected if its corresponding Bid Form is not signed in the designated space by a person authorized to legally bind the bidder.

Modification of or additions the Bid Form may be cause for rejection of the bid; however, City of Fairfax reserves the right to decide, on a case by case basis, in its sole discretion, whether or not to reject such a bid as nonresponsive. As a precondition to bid acceptance, City of Fairfax may, in its sole discretion, request that the bidder withdraw or modify any such modifications or additions which do not affect quality, quantity, price, or delivery.

Bids and all documents related to this solicitation submitted to City of Fairfax by a bidder or a prospective bidder shall, upon receipt by City of Fairfax, become the property of City of Fairfax.

7. BIDDER CERTIFICATION

Submission of a signed Bid Form is certification by the respective bidder that it is registered with the Virginia State Corporation Commission, if applicable, it is a legal entity authorized to enter into an agreement with the City, and that it will accept any award made to it as a result of the submission.

8. BID WITHDRAWAL PRIOR TO BID OPENING

No bid may be withdrawn after it is filed with the Bid Clerk unless the bidder makes a request in writing to the City of Fairfax City prior to the time set for the opening of bids.

9. WITHDRAWAL OF BID FROM CONSIDERATION AFTER BID OPENING

After the opening of a bid, a bidder may withdraw its bid from consideration if the price of the bid is substantially lower than other bids due solely to a mistake therein, provided the bid is submitted in good faith, the mistake is a clerical mistake as opposed to a judgment mistake, and is 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 error or unintentional omission can 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. No partial withdrawals of bids will be permitted after the time and date set for bid opening. The bidder must give notice in writing to the City of Fairfax City of a claim of right to withdraw a bid and provide all original work papers, documents and other materials used in the preparation of the bid sought to be withdrawn, within two (2) business days after the date of bid opening. A bid may also be withdrawn if City of Fairfax fails to award or issue a notice of intent to award the bid within ninety (90) days after the date fixed for opening bids.

10. SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

Each bidder acknowledges by submitting a bid that it has taken steps reasonably necessary to ascertain the nature and locations of the Work of the solicitation, and that it has investigated and satisfied itself as to the general and local conditions and factors which can affect the work or its cost, including but not limited to:

- a. conditions bearing upon transportation, disposal, handling, and storage of materials;
- b. the availability of labor, water, electric power, and roads;
- c. uncertainties of weather, river stage, tides, or similar physical conditions at the site;
- d. the conformation and conditions of the ground; and
- e. the character of equipment and facilities needed before and during work performance.

Each bidder also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work publicly or otherwise available, as well as from the drawings and specifications made a part of this solicitation. Any failure of a bidder to take the actions described and acknowledged in this paragraph will not relieve the bidder from responsibility for estimating properly the difficulty and cost of successfully performing the work without additional expense to the City.

The locations of existing utilities, including underground utilities, which may affect the work, are indicated on the drawings or in the specifications insofar as their existence and location were known at the time of preparation of the drawings. However, nothing in these drawings or specifications shall be construed as a guarantee that such utilities are in the location indicated or that they actually exist, or that other utilities are not within the area of operations. The bidder shall make all necessary investigations to determine the existence and locations of such utilities. The bidder will be held responsible for any damage to and maintenance and protection of existing utilities and structures, of both public and private ownership. However, if it is determined that such existing utility lines or structures require relocation or reconstruction or any other work beyond normal protection or as called for in the Contract Documents, then such additional work will be ordered under the terms of the clause entitled "Changes in Work".

The City assumes no responsibility for any conclusions or interpretations made by the bidder based on the information made available by the City. The City assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of the contract, unless that understanding or representation is expressly stated in the Contract.

11. ALTERNATE BID

Bidders who have other items they wish to offer in lieu of or in addition to what is required by this solicitation shall submit a separate bid clearly marked "ALTERNATE BID". Alternate bids will be automatically deemed nonresponsive and will not be considered for award. Such bids will, however, be examined prior to awarding the contract contemplated herein and may result in either cancellation of all bids in order to permit rewriting of the solicitation to include the alternate item in a rebid or the alternate item may be considered for future requirements.

12. EXCEPTIONS

Bidders taking exception to any part or section or term of this solicitation, including, by way of

illustration and not limitation, the Specifications, the Special Conditions, and any attachments or references hereto or thereto, shall indicate such exceptions on the Bid Form. Failure to indicate any exceptions, shall be interpreted as the bidder's intent to fully comply with the solicitation as written. However, conditional or qualified bids with such exceptions, unless specifically allowed in this solicitation, are subject to rejection in whole or in part as nonresponsive.

13. NONCONFORMING TERMS AND CONDITIONS

If a bidder submits with its bid alternate terms and conditions that do not conform to the terms and conditions in this solicitation, the bid will be subject to rejection for unresponsiveness. City of Fairfax reserves the right to permit the bidder to withdraw nonconforming terms and conditions from its bid prior to a determination by the City of unresponsiveness as a result of the submission of nonconforming terms and conditions.

14. DISCOUNTS

Discounts contingent on payment of invoices by City of Fairfax within a stipulated period of time will be accepted as a component of a bid, but will not be considered by City of Fairfax when evaluating bid prices or when making an award.

15. EXPENSES INCURRED IN PREPARING BID

City of Fairfax accepts no responsibility for any expense incurred by any bidder in the preparation and presentation of a bid. All expenses related to a bid are the sole responsibility of the bidder.

16. PARKING

At most City of Fairfax government facilities, parking for contractors' vehicles is not provided by City of Fairfax. A contractor is responsible for the payment of any parking charges or fines resulting from illegal parking at any worksite(s).

17. ERRORS IN EXTENSION

Where the unit price and the extension price are at variance, the unit price will prevail.

18. NEGOTIATION WITH THE LOWEST RESPONSIBLE RESPONDER

Unless all bids are cancelled or rejected, the City reserves the right granted by §2.2-4318 of the Code of Virginia to negotiate with the lowest responsive, responsible responder to obtain a Contract price within the funds available whenever such low bid exceeds the available funds. Negotiations with the low bidder may include both modifications of the bid price and the specification/scope of work to be performed.

19. NEW MATERIAL

Unless otherwise provided for in this solicitation, the bidder represents and warrants that the goods, materials, supplies, or components offered to City of Fairfax under this solicitation and any resulting contract are new, not used or reconditioned, and are not of such age or deterioration as to impair their usefulness or safety, and that the goods, materials, supplies, or components offered are current production models of the respective manufacturer. If the bidder believes that furnishing used or reconditioned goods, materials, supplies or components will be in City of Fairfax's interest, the bidder shall notify the City in writing no later than ten (10) business days prior to the date set for opening of bids. The notice shall include the reasons for the request and any benefits which may accrue to City of Fairfax if the City authorizes the bidding of used or reconditioned goods, materials, supplies or components.

20. SAMPLES

Bidders shall submit any samples required in this solicitation in accordance with instructions hereunder. Samples will not be returned. However, if a bidder requires that a sample(s) be returned the bidder must submit a request in writing within fourteen (14) calendar days after

bid opening. The bidder shall arrange to retrieve the samples at their sole expense at a location and in a manner identified by the City of Fairfax. Samples not retrieved in accordance with these terms will be disposed of at the discretion of City of Fairfax not sooner than thirty (30) calendar days after City of Fairfax staff notify the bidder of the availability of samples for return. Testing of samples may include disassembly or destruction. City of Fairfax shall not be responsible for any loss or damage or diminution of value in the samples while in the possession of the City.

21. USE OF BRAND NAMES

Unless identified as a "No Substitute" item in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to that specific brand, make or manufacturer. The use of the brand, make or manufacturer's identification is intended to convey the general type, style, character, and quality of the article described. Any article which the City in its sole discretion determines to be the equivalent of the article specified, considering quality, workmanship, economy of operation, and/or suitability for the intended use, may be accepted and considered for award. It is the bidder's sole responsibility to only use substitutes that meet the above criteria.

For those items not identified as "No Substitute", the City has established the following procedure for determining the equivalency of a particular item:

Bidder Submission of Proposed Equivalent Item(s):

- a. Bidder shall submit to the City its proposed item(s) for determination of their equivalency to the Brand Name(s) specified.
- b. Each proposed item must be described on a separate page, indicating the specifics of the proposed item. Attach any technical information, photographs, brochures or other relevant data supporting the proposed item that permits the City to fairly determine acceptability of the item proposed. The City, in its analysis, will consider relative costs, equivalency of features, serviceability, the design of the item proposed, and pertinent performance factors.
- c. All pages of the submission shall be marked with the name, address and contact information of the bidder, and sent to the City to arrive no later than the close of business, ten (10) calendar days prior to the scheduled bid opening. E-mail messages will be accepted, followed by mailed originals and attachments, at donna.strouth@fairfaxva.gov. All hard copies shall be submitted in duplicate.

City Review of Proposed Equivalent Item(s):

- a. Approved item(s) shall be added to the solicitation, in the form of an amendment to the solicitation which shall be issued on or about the tenth (10th) day prior to the date set for the opening of bids and forwarded to all bidders of record.
- b. Bidders whose item(s) have not been approved will be so advised in writing prior to bid opening.

22. BIDDER INVESTIGATIONS

Before submitting a bid, each bidder must make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by the City that the bidder will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful bidder from its obligation to comply in every detail with all provisions and requirements of the contract documents or will be

accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful bidder.

23. UNBALANCED & CONDITIONAL BIDS

A. UNBALANCED BIDS

- (1) “*Unbalanced bid*” is a bid which includes a number of items or alternates to be added or deleted, on which a bidder quotes higher prices on items expected to be ordered in higher quantities than those used for bid evaluation, and/or low prices on items the bidder believes will be ordered in smaller quantities.
- (2) “Mathematically unbalanced bid” is a bid in which each item does not carry its share or proportion of the cost of work plus profit, or one in which there are nominal prices for some work and higher prices for other work.
- (3) Bidders are cautioned not to unbalance their bids. The City reserves the right to reject any bid that is decisively unbalanced.

B. CONDITIONAL BIDS

- (1) When a bidder unilaterally imposes a condition that the bid is an “all or none” offer, i.e., that any acceptance of the bid must include all items offered. Such a condition affords the bidder an inequitable advantage and contradicts the City’s right to accept any item or group of items in the bid. Conditional bids will be rejected.*
- (2) When a bid is conditioned upon receiving the award of both the contract in question and another contract. Such tying together of bids provides an undue competitive advantage and will not be accepted.

24. QUALIFICATION OF BIDDERS

Each bidder may be required, before the award of contract, to show to the complete satisfaction of the City of Fairfax Buyer that it has the necessary facilities, ability, and financial resources to comply with the contract and furnish the service, material, or goods specified herein in a satisfactory manner. Each bidder may also be required to provide past history and references which will enable the Buyer to be satisfied as to the bidder’s qualifications. Failure to qualify according to the foregoing requirements will justify bid rejection by the City of Fairfax.

25. DEBARMENT STATUS

The bidder shall indicate, in the space provided on the Bid Form, whether or not it, or any of its principals, is/are currently debarred from submitting bids to City of Fairfax, Virginia, or any other state or political subdivision, and whether or not it is an agent of any person or entity that is currently debarred from submitting bids to City of Fairfax, Virginia, or any other state or political subdivision. An affirmative response may be considered grounds for rejection of the bid.

26. INTEREST IN MORE THAN ONE BID AND COLLUSION

Multiple bids received in response to this solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that a bidder is interested in more than one (1) bid for a solicitation both as a bidder and as a subcontractor for another bidder will result in rejection of all bids in which the bidder is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more bidders submitting a bid for the work. Any or all bids may be rejected if reasonable grounds exist for believing that collusion exists among any bidders. Bidders rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

27. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information submitted by a bidder or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection 4-101(2) of the City of Fairfax Purchasing Resolution may be exempted from public disclosure under the Virginia Freedom of Information Act "(VFOIA)". However, the bidder or contractor must invoke the protection of this subsection prior to or upon submission of the data or other materials, and must identify clearly and in writing, in the spaces provided on the Bid Form, the data or other materials sought to be protected and the reasons why protection is necessary or falls within the exceptions to the VFOIA. It is the bidder's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

28. INFORMALITIES

City of Fairfax reserves the right to waive minor defects or variations from the exact requirements of the solicitation in a bid insofar as those defects or variations do not affect the price, quality, quantity, or delivery schedule of the goods, services and/or construction being procured. If insufficient information is submitted for City of Fairfax to properly evaluate the bid by a bidder, City of Fairfax reserves the right to require such additional information as it may deem necessary after the bid opening time and date, provided that the information requested does not change the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured.

29. CITY OF FAIRFAX BUSINESS LICENSE

Bidders must comply with the City of Fairfax business license requirements, if applicable. For information on the applicability of this requirement, contact the City of Fairfax Commissioner of Revenue Office, Suite 234, 10455 Armstrong Street, Fairfax, Virginia 22030; telephone number (703) 385-7905.

30. AUTHORITY TO TRANSACT BUSINESS

Any bidder organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the firm or entity and the identification number issued to the bidder by the Virginia State Corporation Commission must be written in the space provided on the Bid Form. Any bidder that is not required to be authorized to transact business in the Commonwealth shall include in its bid a statement describing why the bidder is not required to be so authorized. The City may require a firm to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in Virginia. Failure of a prospective and/or successful bidder to provide such documentation shall be grounds for rejection of the bid or cancellation of the award. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: www.scc.virginia.gov.

31. VIRGINIA CONTRACTOR LICENSE

For all work that is classified as being performed by "Contractors" as defined by the Virginia State Board for Contractors, a Class A, B, or C License is required. If a bidder fails to obtain this license prior to submission of bid, the bid shall not be considered.

If a contract for performing or managing construction, removal, repair or improvements is for \$120,000 or more, or if the total value of all such construction, removal, repair, or improvements undertaken by the bidder within any twelve (12) month period is \$750,000 or more, the bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS A CONTRACTOR."

If a contract for performing or managing construction, removal, repair or improvements is for \$10,000 or more, but less than \$120,000, or if the total value of all such construction, removal, repair, or improvements undertaken by the bidder within any twelve (12) month period is \$150,000 or more, but less than \$750,000, the bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS B CONTRACTOR."

If a contract for performing construction, removal, repair or improvements is for \$1,000 or more, but no more than \$10,000 or if the total value of all such construction, removal, repair, or improvements undertaken by the bidder within any twelve (12) month period is less than \$150,000, the bidder is required under Title 54.1, Chapter 11, Code of Virginia, as amended, to be licensed as a "CLASS C CONTRACTOR." Class C contractors shall not include electrical, plumbing, and heating, ventilation and air conditioning contractors.

For further information, contact: **the State Board for Contractors, 2 South Ninth Street, Richmond, VA 23219, 804-367-8511.**

32. METHOD OF AWARD

The City will make the award for this solicitation to the lowest responsive and responsible bidder.

33. INSURANCE REQUIREMENTS

Each bidder must review the insurance requirements section carefully with its insurance agent or broker prior to submitting a bid to ensure they can provide the specific coverage requirements and limits applicable to this solicitation. If the bidder is not able to meet the insurance requirements of the solicitation, alternate insurance coverage satisfactory to the City may be considered. Written requests for consideration of alternate coverage must be received by the City Purchasing Agent at least ten (10) calendar days prior to the date set for receipt of bids. If the City denies the request for alternate coverage, the coverage required by the Insurance Requirements section must be provided. If the City permits alternate coverage, an amendment to the Insurance Checklist will be issued prior to the time and date set for receipt of bids.

34. SURETY REQUIRED

A. BID SURETY:

A fully completed and properly executed original Bid Bond, cashier's check, certified check, money order, or cash escrow in the amount of 5% of the amount of the bid made payable to the Treasurer of City of Fairfax shall accompany each bid. The Bid Surety of all bidders may be retained until after the award to the successful bidder is made. The Bid Surety of the successful bidder shall be retained until completion of the Contract or the posting of a Performance Bond, whichever occurs sooner. A bid submitted without a bid surety, or with a bid surety in an amount less than the required amount, shall be rejected. Bidders submitting bids in response to this solicitation shall use the Bid Surety form included in this solicitation.

B. FAILURE TO EXECUTE:

The failure to accept an award and file acceptable Performance and Payment Bonds within fifteen (15) days after notice of award shall be just cause for cancellation of the award and the forfeiture of the Bid Surety to the County as liquidated damages. Award may then be made to the next lowest responsive and responsible bidder.

C. PERFORMANCE SURETY:

Awardee shall submit a fully completed and properly executed original Performance Bond in the amount of 100% of the Contract Amount using the form provided by the City for this

purpose to ensure satisfactory completion of the work. The bond shall be a corporate surety bond issued by a surety company authorized to do business in the Commonwealth of Virginia and acceptable to the City. Where applicable, the Performance Bond shall be renewable annually in the original amount or the updated Contract Amount, as determined by the City, through completion of the Contract, including expiration of all warranty and guarantee periods.

D. PAYMENT BOND:

Awardee shall submit a fully completed and properly executed original Payment Bond in the amount of 100% of the Contract Amount the form provided by the City for this purpose, conditioned upon the payment of all persons who have and fulfill contracts for the Contractor for performing labor, providing equipment, or providing material in the performance of the work provided for in the Contract, shall be required of the successful bidder. The Bond shall be a corporate surety bond issued by a surety company authorized to do business in the Commonwealth of Virginia and acceptable to the City. Where applicable, the Payment Bond shall be renewable annually in the original amount or the updated Contract Amount; as determined by the City for the duration of the Contract Term.

E. ALTERNATE SURETY:

If approved by the City Attorney, a bidder may furnish a personal bond, property bond, or bank or saving and loan association's letter of credit on certain designated funds in the face amount required for the bid bond, payment bond or performance bond. Approval shall be granted only upon a determination by the City that the alternative form of security proffered affords protection to the City equivalent to a corporate surety's bond.

35. NOTICE OF DECISION TO AWARD

When the City has made a decision to award a contract(s), a Notice of Decision to Award will be posted on the City website <http://www.fairfaxva.gov/government/finance/procurement/bid-tabulations>.

PART TWO – CITY OF FAIRFAX INSURANCE REQUIREMENTS

Review this section carefully with your insurance agent or broker prior to submitting a bid or proposal. See the Insurance Checklist (part of the Bid or Proposal Forms) for specific coverages applicable to this Contract. The term "Contract," as used in this section, shall mean the fully executed Agreement covering the work entered into between the City and the Contractor.

Prior to award of this Contract and upon any Contract extension thereafter, the Contractor shall provide to the City Buyer evidence indicating that the Contractor has in force the coverage and endorsements (collectively referred to hereinafter "coverage", "coverages" or "insurance") required below. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated below or in the Contract Documents.

All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with an A.M. Best rating of "A-VII", and as acceptable to the City. The insurance requirements herein shall not operate as a limitation of the Contractor's liability or as a limitation of the Contractor's duty of indemnification, as set forth in this solicitation and any resulting contract. The Contractor is responsible for determining whether the minimum coverage below is adequate to protect its interest.

The Contractor shall secure and maintain (and ensure that its subcontractors, if any, secure and maintain) all insurance required by law or this Contract, including without limitation:

1. **Workers Compensation** - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. The City will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
2. **Commercial General Liability** - \$1,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations. Commercial General Liability - Such Commercial General Liability policy shall include any or all of the following as indicated on the Checklist:
 - A. General aggregate limit is to apply per project;
 - B. Premises/Operations;
 - C. Actions of Independent Contractors;
 - D. Products/Completed Operations to be maintained for five (5) years after completion of the Work;
 - E. Contractual Liability, including protection for the Contractor from claims arising out of liability assumed under this Contract. The general aggregate limit shall apply to this Contract;
 - F. Personal Injury Liability including, including but not limited to, coverage for offenses related to employment and copyright infringement;
 - G. Explosion, Collapse, or Underground (XCU) hazards.
3. **Business Automobile Liability** - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).

4. **Additional Insured** - City of Fairfax, and its officers, elected and appointed officials, employees, and agents shall be named as additional insureds on all policies, except Workers Compensation, Auto, and Professional Liability. A copy of the Additional Insured endorsement, or an "Accord" certificate with the additional insured endorsement box checked for all policies that include an additional insured endorsement, must be provided by the Contractor to the City Buyer prior to the execution of this Contract and any Contract extension. Failure to provide such documentation shall result in cancellation of the award or of the Contract.
5. **Cancellation** - If there is a material change or reduction in coverage, nonrenewal of any insurance coverage or cancellation of any insurance coverage required by this contract, the Contractor shall notify the Purchasing Agent immediately. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be immediately replaced with another policy consistent with the terms of this Contract and in such a manner that there is no lapse in coverage, and the City immediately notified of the replacement. Not having the required insurance throughout the Contract Term is considered a material breach of this Contract and grounds for termination. The Contractor shall also obtain an endorsement providing to the City thirty (30) days advance notice of cancellation or nonrenewal (ten days for nonpayment of premium. A copy of that endorsement shall be provided to the City Buyer prior to the execution of this Contract or any Contract extension thereafter.
6. Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
7. **Contract Identification** – All documentation and copies of endorsements required hereunder shall state this Contract's number and title.
8. **Certificate Holder** - The Certificate Holder must be identified as:

City of Fairfax, Virginia
c/o City Risk Manager
10455 Armstrong Street, Suite 331
Fairfax, Virginia 22030

The Contractor must disclose the amount of any deductible or self- insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. The City reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, the City may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure additional protection for the City.

The Contractor shall require all subcontractors to maintain during the term of this contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation insurance in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' documentation of coverage and endorsements specified herein to the City Buyer immediately upon request by the City and/or prior to a subcontractor performing work related to this Contract.

No acceptance or approval of any insurance by the City shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity, the alternative coverage(s) are submitted to and acceptable to the City and the terms additional endorsements required hereunder are met to the satisfaction of the City Buyer or Risk Manager. The Contractor must provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy and security of the insurance funding.

-END OF SECTION-

PART THREE – BID FORM AND ATTACHMENTS (REQUIRED SUBMISSIONS)



INVITATION FOR BID NUMBER 17038

BID FORM

(REQUIRED SUBMISSION – MUST BE SIGNED IN INK)

THE FULL LEGAL NAME OF THE FIRM OR ENTITY SUBMITTING THIS BID MUST BE WRITTEN IN THE SPACE PROVIDED BELOW. THIS BID FORM, AND ALL OTHER DOCUMENTS REQUIRED BY THE SOLICITATION TO BE SUBMITTED WITH THIS BID FORM, INCLUDING, BUT NOT LIMITED TO ALL ISSUED AMENDMENTS, MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BY A PERSON AUTHORIZED TO LEGALLY AND CONTRACTUALLY BIND THE BIDDER, OR THE BID MAY BE REJECTED:

SUBMITTED BY: (Legal Name Of Entity)	
FORMER NAMES: (Insert all other names that this entity has been known by in the past twenty (20) years)	
AGE OF THE ENTITY: How many Years this entity has been in business under the current name?	
PRINCIPAL PLACE OF BUSINESS:	
TELEPHONE NO.	FAX NO.
CORPORATE WEBSITE	
DUNS NUMBER:	
FORM OF OWNERSHIP: ____CORPORATION; ____GENERAL PARTNERSHIP; ____UNINCORPORATED ASSOCIATION; ____LIMITED LIABILITY COMPANY; ____LIMITED PARTNERSHIP; ____SOLE PROPRIETORSHIP	
WHERE THE ENTITY WAS FORMED: (INSERT NAME OF STATE) _____	
IDENTIFICATION NO. ISSUED TO THE FIRM BY SCC: If Bidder is exempt from the SCC authorization requirement, the it shall include a statement on the entity's letterhead with its application certifying their exemption from this requirement. _____	
VA. CONTRACTOR'S LICENSE #: (if applicable)	_____ Class: _____

DEBARMENT, DISQUALIFICATION AND OR SUSPENSION: Is the entity or any of its principals are _____ YES; _____ NO currently debarred, suspended or disqualified from submitting responses to the City, or any other state, local or federal entities?	
BIDDER'S STATUS PLEASE INITIAL ONE: _____ MINORITY OWNED; _____ WOMAN OWNED; _____ NEITHER	
NOTE: If the answers to any questions below are yes, use additional pages to provide detailed description of the situation and or provide full documentation	
CLAIMS/FINAL RESOLUTION/JUDGMENTS Have any of the following actions occurred on, or in conjunction with, any project(s) performed by the Bidder, any affiliate, or their officers, partners or directors in the last five (5) years? "Legal Actions" shall include civil or criminal litigation, administrative; Proceedings, indictments, arbitrations or the like _____ YES; _____ NO	
TERMINATION/FAILURE TO COMPLETE Has the Bidder ever been terminated for work awarded to it? This includes termination for default (or cause) or for the convenience of the Owner? Has Bidder for any other reason failed to complete a project? _____ YES; _____ NO	
BREACH, DEFAULT, DEBARRED: Within the last five (5) years, has Bidder been disqualified, removed, or otherwise declared in material breach or default of any contract by a public agency, or debarred from participating in bidding for any contract? If yes, please explain the circumstances: _____ YES; _____ NO	
RELEASE FROM CONTRACT APPLICATION, BID OR AWARD: Has the Bidder filed a request to be released from an Application, bid, selection or award of any contract within the last five (5) years? If yes, please explain the circumstances. _____ YES; _____ NO	
FAILURE TO EXECUTE A CONTRACT: Has the Bidder ever been selected for award or awarded a contract in which the entity failed to execute the contract? This would include: the entity not signing the contract documents; an inability of the company to obtain insurance requirements; or failure of the company to submit required forms and attestations. If yes, please explain the circumstances: _____ YES; _____ NO	
BANKRUPTCY: Has the Bidder filed for bankruptcy in the last seven years or is your firm currently the debtor in a bankruptcy case? If yes, please explain the circumstances _____ YES; _____ NO	
CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES Provide the name and address of the person designated by the Bidder to receive notices and other communications (Refer to the section headed Notices in _____ _____	

Part Four City of Fairfax Contractual Terms and Condition
of this solicitation for further details):

ESCROW ACCOUNT:

Bidders shall indicate below its intended use, or nonuse of the escrow provisions available:

I **DO** ____ or I **DO NOT** ____ wish to use the Escrow Account for retained funds as provided for in this solicitation.

TRADE SECRETS OR PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by a bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the Bidder must identify the data and materials need such protection prior to submission of such data and material, and state the reasons why protection is necessary. Please mark one:

(☐) **Yes**, the Application I have submitted does contain trade secrets and/or proprietary information.

(☐) **No**, the Application I have submitted does not contain any trade secrets and/or proprietary information.

If Yes, you must clearly identify below the exact data or other materials to be protected and list all applicable page numbers of the Application containing such data or materials:

STATE THE SPECIFIC REASON(S) WHY PROTECTION IS NECESSARY:

NOTE: If you fail to identify the data or other materials to be protected and state the reasons why such protection is necessary in the space provided above, you have not invoked the protection, accordingly, effectively the Application will be open for public inspection consistent with applicable law.

CERTIFICATION OF NON-COLLUSION:

The undersigned certifies that this Application is not the result of, or affected by, any act of collusion with another person(as defined in Code of Virginia Section 59.1-68.6 et seq.), engaged in the same line of business or commerce; or any act of fraud punishable under the Virginia Governmental Frauds Act (Code of Virginia §18.2-498.1 et seq.).

CONFLICT OF INTEREST:

The undersigned certifies and warrants that to the best of its knowledge and belief and except as otherwise disclosed, it does not have any organizational conflict of interest, which is defined as a situation in which the nature or work under the contract and the bidder's organizational, financial, contractual or other interest are such that award of the contract may result in the bidder receiving an unfair competitive advantage, or the bidder's objectivity in performing the contract work may be impaired. The bidder agrees that if after being awarded it discovers an organizational conflict of interest with respect to the being awarded, it shall make an immediate and full disclosure in writing to the City of Fairfax which shall include a description of the action which the bidder has taken or intends to take to eliminate or neutralize the conflict.

INDICATE THE NAME AND CONTACT INFORMATION OF THE PERSON WHO CAN RESPOND
AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS BID (I.E. PROJECT MANAGER):

NAME (PRINTED): _____ TITLE: _____

E-MAIL ADDRESS: _____ TEL. NO.: _____

The undersigned swears or affirms under the penalty of perjury and upon personal knowledge that the contents of the Application for Prequalification are true and correct.

The undersigned swears or affirms under the penalty of perjury that the Bidder, its agents, servants and/or employees, to the best of his/her knowledge and belief, have not in any way colluded with anyone for and on behalf of the Bidder an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Bidder, or themselves, to gain any favoritism in the award of any contract resulting from this bid.

NAME OF AND TITLE BIDDER'S REPRESENTATIVE

SIGNATURE OF BIDDER'S REPRESENTATIVE

**IFB No. 17038
BID FORM (CONTD.)**

AGREEMENT PRICING SCHEDULE

FOR PROVIDING **CONSTRUCTION OF ADA RAMP PROJECT** PER THE TERMS, CONDITIONS, AND SPECIFICATION OF THIS SOLICITATION:

TOTAL LUMP SUM BID AMOUNT \$_____

WRITTEN IN WORDS:_____

TIME LIMIT FOR PROJECT:	LIQUIDATED DAMAGES:
SEVENTY (70) CALENDAR DAYS AFTER THE DATE OF COMMENCEMENT AS INDICATED IN THE NOTICE TO PROCEED	\$200.00 PER CALENDAR DAY

PROJECT COST BREAKDOWN: The sum of all items must be equal to the total lump sum bid amount.

ITEM	DESCRIPTION	EST. QTY	UNIT	UNIT PRICE	EXTENDED PRICE
2001	Remove and Replace CMU Cheek walls and steps	1	LS	\$	\$
2002	Backfill CMU walls with top soil	1	LS	\$	\$
4001	Installation of Wood Ram	1	LS	\$	\$
4002	Installation of safety rail & cap for ADA ramp	1	LS	\$	\$
4003	Installation of new CMU infill	1	LS	\$	\$
5001	Installation of exposed Concrete Landing	1	LS	\$	\$
TOTAL BID AMOUNT			\$		

The undersigned acknowledges receipt of the following amendments:

AMENDMENT NO.	DATE	INITIAL

BIDDER'S NAME

BIDDER'S AUTHORIZED SIGNATORY

DATE

NAME \ TITLE OF AUTHORIZED SIGNATORY



**CITY OF FAIRFAX, VIRGINIA
STANDARD BID BOND**

KNOW ALL PERSONS BY THESE PRESENTS: That _____ the Contractor ("Principal") whose principal place of business is located at _____ and _____ ("Surety") whose address for delivery of 'Notices' is located at _____ are held and firmly bound unto the **City of Fairfax, Virginia**, the Owner ("Obligee") in the amount of five percent (5%) of the Amount Bid by Principal (total Base Bid plus all Additive Bid Items), for the payment whereof, Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the principal has submitted a bid for _____.

NOW, THEREFORE, the conditions of this obligation are as follows. This Bid Bond shall guarantee that the Principal will not withdraw his bid during the period of ninety (90) days following the opening of bids; that if his bid is accepted, Principal will enter into a formal contract with the Owner in accordance with the Contract Between Owner and Contractor, valid post Bid modification, included as a part of the Invitation for Bids (IFB Documents); that Principal will submit a properly executed and authorized Standard Performance Bond and Standard Labor and Material Payment Bond on the forms furnished by the City of Fairfax, Virginia; and that in the event of the withdrawal of said bid within said period, or failure to enter into said contract and give said bonds within ten (10) days after Principal has received notice of acceptance of his bid, Principal and Surety shall be jointly and severally liable to the Owner for the difference between the amount specified in said bid and such larger amount for which the Owner may contract with another party to perform the work covered by said bid, up to the amount of the bid guarantee. This amount represents the damage to the Owner of account of the default of the bidder in any particular thereof.

Signed and sealed this _____ day of _____

Contractor/Principal
(SEAL)

Witness

By: _____
Name & Title

Surety

By: _____
Name of Attorney –in Fact

(SEAL)

IMPORTANT – Surety companies executing BONDS shall appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the Commonwealth of Virginia.

AFFIDAVIT AND ACKNOWLEDGEMENT OF ATTORNEY-IN-FACT

CITY OF FAIRFAX, VIRGINIA

I, the undersigned notary public, do certify that _____, whose name is signed to the foregoing bid bond in the amount of five percent (5%) of the Total Bid Amount and which names City of Fairfax, Virginia, as Obligee, personally appeared before me today in the above jurisdiction and made oath that he/she is the attorney-in-fact of _____, a _____ corporation which is the Surety in the foregoing bond, that he/she is dully authorized to execute on the above Surety's behalf the foregoing bond pursuant to the Power of Attorney noted above and attached hereto, and on behalf of the surety, he/she acknowledged the foregoing bond before me as the above Surety's act and deed.

She/he has further certified that her/his Power of Attorney has not been revoked.

[Complete if Power is recorded: Clerk's Office: _____]

Deed Book/Page No. or Instrument No.: _____

Given under my hand this _____ day of _____

Notary Public

(SEAL)

My name (printed) is: _____

My registration number is: _____

My commission expires: _____

**BID FORM (CONTD.)
REFERENCE DATA SHEET**

Bidder's Name: _____

Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			
Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			
Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			
Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			
Entity's Name:			
Address:			
Telephone:		Contact Person:	
Name And Location Of Project:			

INSURANCE CHECKLIST

CERTIFICATE OF INSURANCE MUST SHOW ALL COVERAGE AND ENDORSEMENTS INDICATED BY "X"

COVERAGES REQUIRED			LIMITS (FIGURES DENOTE MINIMUMS)
X	1	WORKERS' COMPENSATION	STATUTORY LIMITS OF VIRGINIA
X	2	EMPLOYER'S LIABILITY	\$100,000 ACCIDENT, \$100,000 DISEASE, \$500,000 DISEASE POLICY LIMIT
X	3	COMMERCIAL GENERAL LIABILITY(CGL)	\$1,000,000 CSL BI/PD EACH OCCURRENCE, \$2 MILLION ANNUAL AGGREGATE
X	4	PREMISES/OPERATIONS	\$500,000 CSL BI/PD EACH OCCURRENCE MILLION ANNUAL AGGREGATE
X	5	AUTOMOBILE LIABILITY	\$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
X	6	OWNED/HIRED/NON-OWNED VEHICLES	\$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
X	7	INDEPENDENT CONTRACTORS	\$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	8	PRODUCTS LIABILITY	\$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	9	COMPLETED OPERATIONS	\$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	10	CONTRACTUAL LIABILITY (MUST BE SHOWN ON CERTIFICATE)	\$500,000 CSL BI/PD EACH OCCURRENCE
X	11	PERSONAL AND ADVERTISING INJURY LIABILITY	\$1 MILLION EA. OFFENSE, \$1 MILLION ANNUAL AGGREGATE
	12	UMBRELLA LIABILITY	\$1 MILLION BODILY INJURY, PROPERTY DAMAGE AND PERSONAL INJURY
	13	PER PROJECT AGGREGATE	\$1 MILLION PER OCCURRENCE/CLAIM
	14	PROFESSIONAL LIABILITY	
		A ARCHITECTS AND ENGINEERS	\$1 MILLION PER OCCURRENCE/CLAIM
		B ASBESTOS REMOVAL LIABILITY	\$2 MILLION PER OCCURRENCE/CLAIM
		C MEDICAL MALPRACTICE	\$1 MILLION PER OCCURRENCE/CLAIM
		D MEDICAL PROFESSIONAL LIABILITY	\$1 MILLION PER OCCURRENCE/CLAIM
	15	MISCELLANEOUS E&O	\$1 MILLION PER OCCURRENCE/CLAIM
	16	MOTOR CARRIER ACT END. (MCS-90)	\$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
	17	MOTOR CARGO INSURANCE	
	18	GARAGE LIABILITY	\$1 MILLION BODILY INJURY, PROPERTY DAMAGE PER OCCURRENCE
	19	GARAGE KEEPERS LIABILITY	\$500,000 COMPREHENSIVE, \$500,000 COLLISION
	20	INLAND MARINE-BAILLIE'S INSURANCE	\$
	21	MOVING AND RIGGING FLOATER	ENDORSEMENT TO CGL
	22	DISHONESTY BOND	\$
	23	BUILDER'S RISK	PROVIDE COVERAGE IN THE FULL AMOUNT OF CONTRACT
X	24	XCU COVERAGE	ENDORSEMENT TO CGL
X	25	USL&H	FEDERAL STATUTORY LIMITS
X	26	CARRIER RATING SHALL BE BEST'S RATING OF A-VII OR BETTER OR ITS EQUIVALENT	
X	27	NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE IN COVERAGE SHALL BE PROVIDED TO CITY AT LEAST 30 DAYS PRIOR TO ACTION	
X	28	THE CITY SHALL BE AN ADDITIONAL INSURED ON ALL POLICIES EXCEPT WORKERS COMPENSATION, PROFESSIONAL LIABILITY, AND AUTOMOBILE LIABILITY	
X	29	CERTIFICATE OF INSURANCE SHALL SHOW SOLICITATION NUMBER AND TITLE	

INSURANCE AGENT'S STATEMENT:

I have reviewed the above requirements with the bidder named below and have advised the bidder of required coverages not provided through this agency.

AGENCY NAME: _____ AUTH. SIGNATURE: _____

BIDDER'S STATEMENT:

If awarded the Contract, I will comply with contract insurance requirements.

BIDDER NAME: _____ AUTH. SIGNATURE: _____

PART FOUR – GENERAL CONSTRUCTION CONDITIONS

ARTICLE 1 - INTERPRETATION

A. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents and printed with initial capital letters, or all capital letters, the following terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles, paragraphs, and the titles of other documents or forms:

ADDENDA	Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or proposed Contract Documents.
AGREEMENT	The written document, presented in this document that defines the relationship between the Contractor and the Owner regarding the Work
AMENDMENT	A written change to one or more terms of a contract.
APPLICATION FOR PAYMENT	The form accepted by the Project Officer which is to be used by Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.
ARCHITECT, ENGINEER, ARCHITECT/ENGINEER OR A/E	Means the term used to designate the Architect and/or the Engineer that contracts with the City to provide Architectural and Engineering services for the Project. The A/E is a separate contractor and not an agent of Owner. The term includes any associates or consultants employed by the A/E to assist in providing the A/E services.
ASBESTOS	Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
AWARD DATE	Means the date of execution of the Agreement by the City of Fairfax, Virginia
BID OR TENDER	The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
BIDDER	The individual or entity who submits a Bid directly to the Owner
BID FORM	Means a portion of the Invitation for Bid that must be returned to constitute a formal Bid.
BUSINESS DAY	Any calendar day except Saturdays, Sundays or legal holidays observed by the Owner.
CALENDAR DAY	Means the period from one midnight to the following midnight.
CHANGE ORDER	A document recommended by the Project Officer and/or the City Engineer, which is signed by Contractor and City's Project Officer and/or Engineer to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued after the Effective Date of the Agreement.
CONTRACT	The entire and integrated written agreement between the Owner and Contractor concerning the Work, consisting of the Agreement

	and all documents identified in the Agreement as Contract Documents.
CONTRACT DOCUMENTS	Those items so designated in the Agreement.
CONTRACTOR	The individual or entity with whom Owner has entered into the Agreement.
CITY	The City of Fairfax, Virginia, the legal entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed. For the purposes of insurance coverage and indemnification, City shall include the City's officers, departments, agencies, agents and employees.
CITY ENGINEER	City official designated as such.
DRAWINGS	The part of the Contract documents prepared or approved by the City which graphically shows the scope, extent and character of the work to be performed and which have been prepared or approved by Project Officer and/or City Engineer and are referred to in the Contract Documents.
EFFECTIVE DATE OF THE AGREEMENT	The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is executed by the City.
PROJECT OFFICER	The individual or entity named as such in the Agreement
FIELD ORDER	A written order issued by the Project Officer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times
FINAL COMPLETION	The point, after Substantial Completion, when all of the Work and other obligations of the Contractor under the Agreement have been completed by the Contractor, and have been inspected and accepted by the Owner, Contractor has transmitted all closeout submittals, the final adjustment of accounts, and final payment request; and Owner has approved all submittals
HAZARDOUS ENVIRONMENTAL CONDITIONS	The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material or other conditions defined by such the Federal Government or the Commonwealth of Virginia, in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work
HAZARDOUS WASTE	The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time
LAWS AND REGULATIONS; LAWS OR REGULATIONS	Any and all applicable laws, rules, regulations, ordinances, codes or orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction
LIENS	Charges, security interests, or encumbrances upon Project funds, real property, or personal property
LUMP SUM WORK	Work to be paid on the basis of lump sum prices
MILESTONE	A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work
MOBILIZATION	The establishment by the Contractor of the temporary facilities, equipment and personnel at the site thereby enabling the Work to commence
NONPREJUDICIAL DELAY	Any delay affecting a portion of the Work within the available Float Time and not necessarily preventing completion of the Work

	within the Contract Time (i.e., not exceeding the available Project Float).
NOTICE TO PROCEED	A written note given by Owner to Contractor fixing the date on which the Contract Time will commence to run and on which Contractor shall start to perform Contractor's obligations under the Contract Documents
OWNER	See CITY
PARTIAL UTILIZATION	Placing a portion of the Work in service for the purpose for which it is intended (or a related purpose) before reaching Substantial Completion for all the Work
PCBs	Polychlorinated biphenyls
PETROLEUM	Petroleum, including crude oil any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
PROGRESS SCHEDULE	A schedule prepared and maintained by the Contractor describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times. The schedule is also referred to in the General Requirements as Construction Schedule
PROJECT	The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
RADIOACTIVE MATERIAL	Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time
RELATED ENTITY	An officer, director, partner, employee, agent, consultant, or subcontractor
SAMPLES	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 will be judged
SCHEDULE OF SUBMITTALS	A schedule, prepared and maintained by the Contractor, indicating the documents required to be submitted by the Contractor as well as the anticipated dates for submission to the Project Officer
SCHEDULE OF VALUES	A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the work and used as a basis for reviewing Contractor's Applications for Payment.
SHOP DRAWINGS	All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor to illustrate some portion of the Work
SITE	Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor
SPECIFICATIONS	That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work and certain administrative requirements and procedural matters applicable thereto.

SUBCONTRACTOR	<p>An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the site.</p> <p>The time at which the Work (or a specified part thereof) has progressed to where, in the opinion of the Project Officer and Project Officer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.11. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof</p>
SUBSTANTIAL COMPLETION	<p>Means the condition when the owner agrees that the Work, or specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by the Owner for the purposes for which it was intended. The Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until after Final Completion is achieved.</p>
SUPPLEMENTARY CONDITIONS	<p>That part of the Contract Documents which amends or supplements these General Conditions</p>
SUPPLIER	<p>A manufacturer, fabricator, supplier, distributor, material-man or vendor having a direct Contract with the Contractor, a Subcontractor or another Supplier for the furnishing of materials or equipment for incorporation into the Work by the Contractor or any Subcontractor.</p>
UNDERGROUND FACILITIES	<p>All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities or attachments including those that convey any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, traffic or other control systems or water</p>
UNIT PRICE WORK	<p>Work to be paid for on the basis of unit prices.</p>
WORK	<p>The entire construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or providing all services, labor and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction all as required by the Contract Documents</p>
WORK DIRECTIVE CHANGE	<p>A written statement to Contractor, issued on or after the Effective Date of the Agreement and signed by Owner, and recommended by the Project Officer ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Directive Change will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change ordered or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times</p>

B. TERMINOLOGY

Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

1. The following words or terms are not defined but, when used in the Bidding Requirements or Contract Documents, have the following meaning.

2. **Intent of Certain Terms or Adjectives**

The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Project Officer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Project Officer as to the Work. It is intended that such exercise of professional judgment, action or determination will be solely to evaluate, in general, the Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Project Officer any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

3. **Defective**

The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

- a) does not conform to the Contract Documents, or
 - b) does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents, or
 - c) has been damaged prior to Project Officer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph titled Review of Applications for Progress Payment.
 - d) Furnish, Install, Perform, Provide
 - 1) The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2) The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3) The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4) When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
4. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

A. Contract Documents and Intent

1. It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, water haulage, light power, transportation, superintendence, temporary construction of all kinds, and other services and facilities of every nature whatsoever that are necessary to execute and deliver the Work, complete and usable within the scope of the Contract with all parts in working order, and all connections properly made.
2. The general character and scope of the Work are illustrated by the Drawings and listed in the Specifications. Any additional drawings and other instructions deemed necessary by the Project Officer will be furnished to the Contractor when required for the Work and shall become incorporated into the Contract Documents.
3. Unless otherwise specifically noted, the word "similar" where it occurs in the Contract Documents, shall be interpreted in its general sense and not as meaning identical, and all details shall be worked out in relation to their locations and their connection with other parts of the Work.
4. Where "as shown", "as indicated" "as detailed", or words or similar import are used, it shall be understood that the direction, requirements, permission, approval or acceptance of the Project Officer is intended unless stated otherwise. As used herein, "provide" shall be understood to mean "provide complete in place", that is, "furnish and install".
5. Materials or work described in words which, so applied, have a well-known technical or trade meaning, shall be held to refer to the recognized technical or trade meaning.
6. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. Figured dimensions on the plans shall be used in preference to scaling the Drawings. In case of conflict between small and large scale drawings, the large scale drawings shall govern.

B. Amending and Supplementing Contract Documents

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. A Change Order; or
2. A Work Directive Change.
3. Notwithstanding other provisions in this paragraph, neither Contract Price nor Contract Times may be changed by a Work Directive Change.
4. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
5. A Field Order; or
6. Project Officer's approval of specifically identified deviations in a shop drawing or sample.
7. The Project Officer does not have the authority to authorize any change to the Work that results in a change in the Contract Price or the Contract Times. If Contractor believes that any variation or deviation authorized under this paragraph entitles Contractor to an adjustment in the Contract Price or Contract Times, it is the Contractor's obligation to provide written notice to Project Officer in accordance with the requirements of this section prior to proceeding with the Work covered by the variation or deviation.

C. Ownership Of Contract Documents; Reuse

Neither the Contractor nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the City shall have or acquire any title to, or ownership rights in, any of the Drawings, Specifications or other documents (or copies thereof) prepared by or bearing the seal of Project Officer or Project Officer's Consultants including any electronic media editions; and they shall not reuse any such documents, or copies thereof on extensions of the Project or any other project without written consent of the City and specific written verification or adaptation by the Project Officer. Upon completion of the project, all copies of the Drawings and Specifications except the signed Contract sets shall be returned to the Project Officer.

D. Copies Furnished

Except as provided for otherwise, copies of the Drawings and Specifications reasonably necessary for the execution of the Work will be furnished to the Contractor. A limit of three (3) copies each of the Contract Drawings and Specifications may be provided to the Contractor without charge.

E. Documents On The Job Site

The Contractor shall keep on the site of the project a copy of the Drawings, Specifications, Permits, and all other applicable documents including all authorized revisions, and shall at all times give the City and its authorized representatives access thereto.

F. Submittals

Submittals shall be processed per the Specifications unless otherwise specified.

G. Work Schedule

- 1) Normal working hours for the project are 7:00 A.M. to 3:00 P.M., Monday through Friday. If the Contractor desires to perform work outside of the normal working hours, it shall request the City's permission three (3) days prior to scheduling of such change in time to perform the Work. City may refuse the Contractor permission to work outside of normal working hours for any reason, including but not limited to the City's difficulty in making arrangements for proper inspection of the Work.
- 2) City reserves the right to require the Contractor to work outside of normal working hours in the interest of public safety and or convenience. No claim for additional compensation shall be made by the Contractor when such occasions occur.
- 3) Except for Work that is scheduled outside of normal working hours by the City in order to promote public safety and or convenience, the Contractor will be liable for the expense of overtime work of the City's employees required by reason of the Contractor performing work outside normal working hours.
- 4) The Contractor shall avoid making undue noise when working within or outside of normal working hours.

H. Before Starting Work

Within fourteen (14) days after the Effective Date of the Agreement or as otherwise directed by the City Project Officer and/or Engineer, in the formats specified in the Contract Documents, the Contractor shall submit to the Project Officer the following:

1. A preliminary Progress Schedule indicating the starting and completion dates of the various stages of the Work, including any Milestones specified in the Contract

Documents;

2. A preliminary Schedule of Submittals;
3. A preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Amount and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. The schedule of values shall be consistent with the itemized breakdown of the total Bid included on the Bid Form and with the provisions of the Contract Documents.

I. Preconstruction Conference

Before Contractor starts the Work at the site, a conference attended by the Project Officer, Contractor and others as appropriate will be held to discuss:

1. The schedules referred in the paragraph above;
2. The procedures for handling Shop Drawings and other submittals and for processing Applications for Payment and maintaining required records;
3. Review the Contractor's project organization and review the qualifications of the Contractor's resident Project Manager and the qualifications of similar authorized representatives for proposed Subcontractors; and,
4. Discuss the Contractor's plans for complying with the Owners required Health and Safety program and, quality control program and to establish a working understanding among the parties as to the Work. It shall be the responsibility of the Contractor to schedule this meeting with the cooperation of Project Officer, City Engineer, and others.

J. Commencement Of Contract Time; Notice To Proceed

The Contract Times will commence to start fifteen (15) day following the date of Notice to Proceed or Effective Date of the Agreement. A Notice to Proceed (NTP) may be given at any time within thirty (30) days following the Effective Date of the Agreement.

K. Starting The Project

The Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the site prior to the date on which the Contract Time commences to run.

L. Initial And Final Acceptance Of Schedules

At least ten (10) calendar days before the Commencement Date specified in the Notice to Proceed, a conference attended by the Contractor, Project Officer, and others as appropriate will be held to finalize the schedules submitted in accordance with the paragraph above. It shall be the responsibility of the Contractor to schedule this meeting with the cooperation of Project Officer.

It shall be the Contractor's responsibility to produce a schedule acceptable to the Project Officer and/or City Engineer within thirty (30) days after the commencement of Contract Time. The finalized progress schedule will be acceptable to the Project Officer and/or City Engineer if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Time. Such acceptance will not impose on Project Officer the responsibility for the progress or scheduling of the Work nor relieve the Contractor from full responsibility therefore.

The finalized Schedule of Submittals will be acceptable to Project Officer and Project Officer as providing a workable arrangement for reviewing and processing the required submittals. The finalized schedule of values will be acceptable to the Project Officer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work. No progress payment will be made to Contractor until schedules are acceptable to the Project Officer.

M. Materials And Equipment List

At least ten (10) calendar days before the Commencement Date specified in the Notice to Proceed, the Contractor shall submit to the Project Officer for approval a complete list of materials and equipment proposed for use in connection with the Project. Partial lists submitted from time to time will not be considered unless specifically approved by the Project Officer.

After any material or piece of equipment has been approved, no change in brand or make will be permitted unless satisfactory written evidence is presented to prove that the manufacturer cannot make scheduled delivery of the approved material, or that material delivered has been rejected and the substitution of a suitable material is an urgent necessity, or that other conditions have become apparent which indicate that approval of such other material is in the best interest of the City.

N. As-Built Drawings

As-built drawings shall be the responsibility of the Contractor. The Contractor shall maintain and mark up one (1) set of prints of the applicable Contract Drawings to portray as-built construction.

The prints shall be neatly and clearly marked to show all variations between the Work actually provided and that indicated on the Contract Drawings, and all utilities encountered in the Work, etc.

All drafting shall conform to good drafting practice and shall include such supplementary notes, legends and details as may be necessary for legibility and clear portrayal of the as-built construction. These drawings shall be submitted with every payment request.

At the completion of the Project and prior to request for Final Payment, the Contractor shall turn over to the Project Officer a complete set of As-Built drawings.

O. Notice To Proceed ("NTP")

Within thirty (30) calendar days of the Award Date, the Contractor shall be given written NTP with the Work. Such NTP shall state the date on which the Work is to be commenced, and every calendar day thereafter shall be counted in computing the actual Time for Completion.

P. Time For Completion

It is hereby understood and mutually agreed by and between the Contractor and the City that the Commencement Date, the rate of progress, and the Time for Completion of the Work to be done hereunder are essential conditions of the Contract. The Contractor agrees that the Work shall be started promptly upon the Commencement Date and shall be prosecuted regularly, diligently, and uninterruptedly at a rate of progress that will ensure full completion thereof in the shortest length of time consistent with good workmanship.

Q. Use Of Completed Portions

The City shall have the right to take possession of and use any completed or partially completed portions of the Work, notwithstanding that the time for completing the entire Work or such portions may not have expired; but taking such possession and use shall not be deemed an acceptance of any work not done in accordance with the Contract Documents. If the Contractor claims that such prior use increases the cost or delays, the completion of remaining work, or causes refinishing of completed work, the Contractor may submit a claim for compensation or extension of time or both.

ARTICLE 3 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS, ETC.

A. Availability Of Lands

The City shall furnish the Site. City shall notify the Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which the Contractor must comply in performing the Work. The City will obtain in a timely manner and pay for easements, for permanent structures, or permanent changes in existing facilities. If the Contractor and the City are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Amount or Contract Times, or both, as a result of any delay in City's furnishing the Site the Contractor may make a Claim therefore as provided in Article 9.

The Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment. The Contractor shall not enter upon the private property for any purpose without written permission from the owner or the City in the case of property owned by City.

B. Information possessed by the City

The City, as a courtesy, will make available for the Contractor's reasonable review, at the City's offices or together with the Contract Documents, certain boring logs, geotechnical, soils and other reports, surveys and analyses pertaining to the Project site of which the City is aware and has in its possession. Any boring logs that are provided to the Contractor, are only intended to reflect conditions at the locations of the boring and do not necessarily reflect site conditions at other locations on the site. Any reports surveys and analyses provided by the City are for the Contractor's information only, and their accuracy and completeness are not guaranteed or warranted by the City or the A/E, and such reports are not adopted by reference into, nor are they part of the Contract Documents.

Notwithstanding any factual statement, conclusion, or any language or recommendations contained in such reports, the Contractor assumes full responsibility for inspection of the site and for the means and methods of construction that he employs when performing the work. The City shall not be liable for any additional work or cost arising as a result of any conclusions reached or assumptions derived by the Contractor from or based upon any such geotechnical, soils and other reports, surveys and analyses which the City makes available for the Contractor's information and review.

C. Referenced Standards

Reference to standard specifications, manuals or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as otherwise specifically stated in the Contract Documents. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of Owner, Project Officer, Contractor, or any of their subcontractors, consultants, agents or employees from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to the Owner, or Project Officer or any of their related entities any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

D. Differing Site Conditions

The Contractor shall, within twenty-four (24) hours after becoming aware of differing site

conditions, and before the conditions are disturbed, give a written notice to the Project Officer of subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or previously unknown physical conditions discovered at the site of an unusual nature and which differ materially from those ordinarily expected to be encountered at the site.

The Project Officer will investigate the site conditions within two (2) business days after receiving the notice. If the conditions do materially differ to the extent that an increase or decrease would result in the Contractor's cost of the work, or the time required for performing any part of the work under the contract, an equitable adjustment may be made under this clause and the Contract modified in writing accordingly.

No request by the Contractor for an adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required. If the Contractor proceeds with any work that may be affected by such differing site conditions before giving notice to the Project Officer as set forth herein, such work shall be at the Contractor's sole risk and expense.

E. Reporting And Resolving Discrepancies

1. Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown therein and all applicable field measurements. The Contractor shall promptly report in writing to the Project Officer any conflict, error or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from the Project Officer before proceeding with any Work affected thereby.
2. If, during the performance of the Work, the Contractor discovers any conflict, error, ambiguity or discrepancy in or among the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, or manual or code or of any Supplier, the Contractor shall give notice within fifteen (15) days to the Project Officer and/or the City Engineer in writing. The Contractor shall not proceed with the Work affected thereby, (except in an emergency) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Article 6, or the Contractor obtains a written interpretation or clarification from the Project Officer. Any work done which is directly or indirectly affected by the same, without first obtaining authorizations or clarifications discussed above will be at the Contractor's risk and the Contractor shall bear all resultant costs or delays.
3. The City shall not be liable to the Contractor for any failure by the Contractor to give notice of any conflict, error, ambiguity or discrepancy in the Contract Documents that should be reasonably known. Except as may be otherwise specifically stated in the Contract Documents, 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 the provision of any standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents) or 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).

F. Tests

Any specified laboratory tests of materials and finished articles shall be made by bureaus, laboratories or agencies approved by the City Engineer and/or Project Officer and the certified reports of such tests shall be submitted to the Project Officer. All costs in connection with the testing shall be borne by the Contractor. Failure of any material to pass the specified tests or any test performed by the Project Officer will be sufficient cause for refusal to consider, under

this Contract, any further materials of the same brand or make of that material. Samples of various materials delivered on the site or in place may be taken by the Project Officer for testing.

Samples failing to meet the Contract Document requirements will automatically void previous approvals of the items tested.

G. Surveys And Controls

Unless otherwise stated, the City will provide horizontal and vertical reference points necessary for the Contractor to proceed with the Work. The Contractor shall carefully preserve all reference points, and in the case of destruction thereof by the Contractor or due to the negligence of the Contractor or of any subcontractor, the Contractor shall be responsible for expense and damage resulting therefrom and shall be responsible for any mistakes or construction errors that may be caused by the loss or disturbance of such reference points.

The Contractor shall be responsible for laying out the Work and shall retain a professional land surveyor licensed in the Commonwealth of Virginia to survey and provide all necessary construction layouts and to establish all control lines, grades, and elevations during construction.

H. Project Officer and/or City Engineer's Review

After receipt of written notice as required in paragraphs above, the Project Officer will promptly review the pertinent conditions, determine the necessity of City's obtaining additional explorations or tests with respect thereto and advise the Contractor of findings and conclusions.

1. Possible Price and Time Adjustments

The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in the Contractor's cost, or time required for the performance of the Work subject, however, to the following:

- a. such condition must meet any one or more of the categories described above and;
- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in the Contract Price will be subject to the provisions contained in the General Construction Conditions
- c. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
- d. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to City in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
- e. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
- f. Contractor failed to give written required notice within the specified.

2. If the City and the Contractor are unable to agree on entitlement to or on the amount or extent, if any of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in the City of Fairfax General Construction Projects Terms and Conditions. However, the City, and the City's Consultants shall not be liable to the Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of architects, attorneys, and other professionals and all court or other

dispute resolution costs) sustained by the Contractor on or in connection with any other project or anticipated project.

I. Underground Facilities

1. Shown or Indicated

The information and data shown or indicated in the Contract Documents with respect to the existing Underground Facilities at or contiguous to the site is based on information and data furnished to the City or Project Officer by the owners of such Underground Facilities, (including City) or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- a. The City nor the Project Officer shall be responsible for the accuracy or completeness of any such data; and
- b. The Contractor shall have full responsibility for reviewing and checking all information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities, for locating all Underground Facilities whether or not shown or indicated in the Contract Documents, for coordinating the Work with the owners of such Underground Facilities during the Work for the safety and protection of the Underground Facilities as provided in paragraph titled Safety and Protection and for repairing any damage thereto resulting from the Work. The Contractor shall perform whatever investigations he deems necessary to locate all Underground Facilities, including but not limited to test pitting in advance of excavation. The cost of all the Contractor's activities under this paragraph will be considered as having been included in the Contract Price.

2. Not Shown Or Indicated

If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated with reasonable accuracy in the Contract Documents, the Contractor shall, promptly after becoming aware thereof and before disturbing conditions effected thereby or performing any Work affected thereby (except in an emergency), identify the owner of such Underground Facility and give written notice thereof to that owner and to the City. The Project Officer will promptly review the Underground Facility and determine the extent to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, the Contractor shall be responsible for the safety and protection of the Underground Facility.

- a. If the Project Officer concludes that a change in the Contract Documents is required, a Work Directive Change or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated.
- b. If the City and the Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in the Contract Price or the Contract Times, the City or the Contractor may make a Claim therefor as provided in the City of Fairfax General Construction Projects Terms and Conditions.
- c. No claim of the Contractor under section shall be considered unless (1) the Contractor has given the notice required in this section, and (2) in accordance with this document for all work associated with the claim, the Contractor submits to the City details setting forth the Contractor's justification for an increase or decrease in the Contract Price or the Contract Times as called for in Article 9 of the City of Fairfax General Construction

Projects Terms and Conditions.

- d. Access to municipal structures, hydrants, valves, manholes, fire alarms etc. shall not be obstructed by the Contractor. The Contractor is to make no connections to or operate valves on water mains or otherwise interfere with the operation of the water system, without first giving written notice to and securing written approval from the appropriate Public Entity.
- e. The Contractor shall allow access to and not interfere with plant operation and maintenance personnel.

J. Limited Reliance By Contractor On Technical Data

The Contractor may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against City or Project Officer, or any of their Related Entities with respect to:

- 1. The completeness of such reports for Contractor's purposes, including but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto or
- 2. Other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
- 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. The Contractor shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by the Contractor, Subcontractors, Suppliers, or anyone else for whom the Contractor is responsible.

If the Contractor encounters a Hazardous Environmental Condition or if the Contractor or anyone for whom the Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph titled Emergencies); and (iii) notify City and Project Officer (and promptly thereafter confirm such notice in writing). City shall promptly consult with the Project Officer concerning the necessity for the City to retain a qualified expert to evaluate such condition or take corrective action, if any.

The Contractor shall not be required to resume Work in connection with such condition or in any affected area until after City has obtained any required permits related thereto and delivered to Contractor written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If City and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor either party may make a claim therefore as provided in Article 9.

If, after receipt of such written notice, the Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then the City may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If the City and the Contractor cannot agree as

to entitlement to or on the amount or extent, if any, of an adjustment in the Contract Price or the Contract Times as a result of deleting such portion of the Work, either party may make a claim in accordance with Article 9. The City may have such deleted portion of the Work performed by the City's own forces or others in accordance with Article 5.

To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the City, the Project Officer, City's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by the Contractor or by anyone for whom the Contractor is responsible. Nothing in this paragraph will obligate the Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

The provisions of paragraphs titled Subsurface and Physical Conditions, Limited Reliance by the Contractor on Technical Data Authorized, Differing Subsurface or Physical Conditions, Underground Facilities are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 4 - CONTRACTOR'S RESPONSIBILITIES

I. Prosecution and Progress of Work

A. Supervision and Superintendence

The Contractor shall, supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, or procedure of construction. The Contractor shall not be responsible for the negligence of the City or Project Officer, in the design or specification of a specific means, method, techniques, sequence, or procedure of construction which is shown or indicated in and required by the Contract Documents. Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents subject to any changes authorized by the City.

The Contractor shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to City and Project Officer except under extraordinary circumstances. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received by the superintendent shall be binding on the Contractor.

B. Labor and Working Hours

The Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and Contractor will not permit the performance of Work on Saturday, Sunday or any legal holiday without the City's written consent (which will not be unreasonably withheld) given after prior written notice to the Project Officer and/or City Engineer.

Maintenance work may be performed during hours other than regular working hours. Requests to work during other than regular working hours must be submitted to the Project Officer and/or City Engineer at least twenty-four (24) hours in advance of the period proposed for such work and shall set forth the proposed schedule for such work to give Project Officer ample time to arrange for appropriate personnel to be at the site of the Work. Except as otherwise required for the safety or protection of persons, or the Work, or property at the site or adjacent thereto, or allowed as describe above, all Work shall be performed during regular working hours.

C. Services, Materials, And Equipment

Unless otherwise specified in the Contract Documents, the Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the, performance, testing, start-up and completion of the Work.

All water for testing, flushing and progress of the Work shall be available by connecting to the City's water system at points approved by the City. The connection shall be provided at no cost to the City. The water will be provided to the Contractor at no cost, with the exception of water for the Contractor's trailer (which shall be the Contractor's

responsibility). The City's 120-volt outlets at various locations will be available to the Contractor at no cost. Access to the City's 3-phase 480 volt system will be available provided the Contractor installs at its own expense all connections, wiring and current protection devices.

Materials furnished by City, if any, shall become the responsibility of the Contractor upon delivery.

All materials and equipment incorporated into the Work shall be as specified or if not specified shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by Project Officer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, used, cleaned, protected and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the Project Officer or any of City's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of the City.

D. Progress Schedule

The Contractor shall adhere to the Progress Schedule (established in accordance with the paragraph entitled Initial and Final Acceptance of Schedules as it may be adjusted from time to time as provided below. The schedule must represent, at all time, the current contract scope, including all deletion and additions.

Contractor shall submit to Project Officer for acceptance proposed adjustments in the progress schedule that will not result in changing the Contract Times.

The Proposed adjustment in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 6. Such adjustments will comply with any provision of the General Requirements applicable thereto. Adjustments in Contract Times may only be made by a change order.

E. Subcontracts

Unless otherwise specified, the Contractor shall, within fifteen (15) calendar days after execution of the Contract by the City provide the Project Officer, in writing, the names of all subcontractors proposed for the principal parts of the Work and for such others as the Project Officer may direct and shall not employ any that the Project Officer may, within a reasonable time, object to as incompetent or unfit after an appropriate determination of the subcontractor's ability. No proposed subcontractor will be disapproved except for cause.

The Contractor shall make no substitutions for any subcontractor previously selected/approved unless first submitted to the City for approval.

The Contractor shall be as fully responsible to the City for the acts and omissions of the Contractor's subcontractors as the Contractor is for the acts and omissions of persons directly employed by him.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the Work to bind subcontractors to the Contractor by the terms of the General Conditions of the Contract, Special provisions and other documents comprising the Contract

insofar as such documents are applicable to the work of subcontractors.

Nothing contained in the Contract shall be construed to create any contractual relation between any subcontractor and the City, nor shall it establish any obligation on the part of the City to pay to, or see to the payment of any sums to any subcontractor.

F. Use of Site and Other Areas

The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and other areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or areas, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work. Should any claim be made against such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by other dispute resolution proceeding or at law. The Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless the City, the Project Officer and all officers, directors, partners employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including, but not limited to all fees and charges of Project Officers, architects, attorneys and other professionals and court or other dispute resolution costs) arising out of or relating to any claim, or action, legal or equitable, brought by any such owner or occupant against City, Project Officer, Project Officer or any other party indemnified hereunder to the extent caused or based upon Contractor's performance of the Work.

During the progress of the Work, the Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish and other debris. Removal and disposal of such waste materials, rubbish and other debris shall conform to applicable Laws and Regulations. Prior to Substantial Completion the Contractor shall clean the site and make it ready for utilization by the City. At the completion of the Work Contractor shall remove from the site all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by City. The Contractor shall restore to the original condition all property not designated for alteration by the Contract Documents.

G. Lands By Contractor

If the Contractor requires additional land for temporary construction facilities and for storage of materials and equipment other than the areas available on the site or right-of-way, or as otherwise furnished by the City, the Contractor shall provide such other lands and access thereto entirely at the Contractor's own expense and without liability to the City. The Contractor shall not enter upon private property for any purpose without written permission.

H. Loading Structures

The Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

I. Record Documents

The Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Addenda, Specifications, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all

approved Samples and a counterpart of all approved Shop Drawings will be available to the Project Officer for reference. Upon completion of the Work, these record documents, Samples and Shop Drawings will be delivered to the Project Officer.

J. Safety And Protection

1. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 - a. all persons on the Site who may be affected by the Work;
 - b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
 - c. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.
2. The Contractor shall comply with all applicable Laws and Regulations, relating to the safety of persons or property, or to the protection of persons or property from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
3. All damage, injury or loss to any property referred to in paragraph 1 above, caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier or any other individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the City or anyone employed by the City or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the City accepted such Work (except otherwise expressly as provided in connection with Substantial Completion).

K. Safety Representative

The Contractor shall designate a qualified and experienced safety representative at the Site whose sole duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

L. Sanitary Provisions

The Contractor shall provide and maintain such sanitary accommodations for the use of the Contractor's employees and those of its subcontractors as may be necessary to comply with the requirements and regulations of the local and State departments of health and where additional accommodations are necessary to maintain a reasonably sanitary environment, then such additional accommodations shall be made as determined by the Project Officer and/or City Engineer.

M. Emergencies

In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury or loss. Contractor shall give Project Officer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Project Officer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to an emergency, and the emergency occurred through no fault of the Contractor, a Work Directive Change or Change Order will be issued.

N. Shop Drawings and Samples

After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, Contractor shall submit to Project Officer for review and approval in accordance with the acceptable Schedule of Submittals, or for other appropriate action if so indicated in the General Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission. All submittals will be identified as Project Officer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show Project Officer the services, materials, and equipment Contractor proposes to provide and to enable Project Officer to review the information for the limited purposes required by Paragraph J (Safety and Protection).

The Contractor shall also submit Samples to the Project Officer, for review and approval in accordance with the acceptable Schedule of Submittals. All Samples, in the number specified in the Contract Documents, shall have been checked by and accompanied by a specific written certification that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Project Officer may be required to enable Project Officer to review the submittal for the limited purposes required by Paragraph J (Safety and Protection).

Before submission of each Shop Drawing, or Sample, Contractor shall have determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers and similar data with respect thereto; and the suitability of all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto; and shall also have reviewed or coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

At the time of each submission, the Contractor shall give the Project Officer specific written notice of any variations that the Shop Drawings or Samples may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawing's or Sample Submittal; and, by a specific notation to be made on each Shop Drawing or Sample submitted to the Project Officer for review and approval of each such variation.

The Project Officer, with assistance from the Owner's Consultant, will provide timely review

of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to the Project Officer. Project Officer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation of the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. The Project Officer's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor shall make corrections required by the Project Officer, and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Project Officer on previous submittals.

The Project Officer's review and approval of Shop Drawings or Samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has called Project Officer's attention to each such variation in writing at the time of submission as required by Paragraph J (Safety and Protection) and Project Officer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by the Project Officer relieve Contractor from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of the Agreement.

Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to Project Officer's review and approval of the pertinent submission will be the sole expense and responsibility of Contractor.

O. Continuing the Work

The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Article 9 or as the Contractor and the City may otherwise agree in writing.

P. The Contractor's General Warranty and Guarantee

The Contractor warrants and guarantees to the City that all Work will be in accordance with the Contract Documents and will not be defective. The Project Officer and its Related Entities shall be entitled to rely on representation of the Contractor's warranty and guarantee.

The Contractor's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
2. normal wear and tear under normal usage.

The Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:

1. observations by Project Officer;

2. recommendation by Project Officer or payment by the City of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Project Officer or any payment related thereto by the City;
4. City's use or occupancy of the Work or any part thereof;
5. any review and approval of a Shop Drawing or sample submittal or issuance of notice of acceptability by the Project Officer;
6. any inspection, test, or approval by others; or
7. any correction(s) of defective Work by the City.

Q. Delegation of Professional Design Services

The Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.

If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the City will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Project Officer.

The City and Project Officer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided City and the Project Officer have specified to Contractor all performance and design criteria that such services must satisfy.

Pursuant to this Paragraph, Project Officer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Project Officer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in by Paragraph J (Safety and Protection).

The Contractor will not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

R. Obligation To Mitigate Costs

As evidenced by the Certification of the Contractor Compliance, the Contractor is obligated to take all possible actions to minimize costs to the City in any situation for which the Contractor believes additional compensation is due, provided such actions will not jeopardize the quality of the Work.

S. Access To Records

The Contractor and all Subcontractors shall maintain books, records, documents and other evidence directly pertinent to performance of the Work under the Contract Documents in accordance with generally accepted and consistently applied accounting principles and practices. The City or its authorized representatives shall have access, at all times during normal business hours, to such books, records, documents and evidence for the purposes of

inspection, audit and copying. The Contractor shall provide suitable facilities for such access and inspection. Such books, records, documents and evidence shall be maintained and made available until final payment and settlement of any disputes, claims, and litigation. The Contractor shall provide to the City, when requested, copies of all purchase orders issued or sub agreements executed, complete with all amendments, for Work under the Contract Documents. The Contractor shall include this provision in all subcontracts, so that City will have access to all documents kept by subcontractors that are pertinent to the project.

T. Damages Caused By Work

Any damage resulting from work performed under this Contract shall be repaired to the City's satisfaction at the Contractor's expense.

U. Cutting, Patching, And Digging

The Contractor shall do all cutting, fitting, or patching of the Contractor's work that may be required to make its several parts come together properly and fit it to receive or be received by work of other contractors as shown upon or reasonably implied by the Drawings and Specifications for the completed project and shall make good after them as the Project Officer may direct. The Contractor shall not endanger any work by cutting, digging, or otherwise, and shall not cut or alter the work of any other contract except with the consent of the Project Officer.

V. Related Work at Site

1. The City may perform other work related to the Project at the Site with the City's employees or via other direct contracts therefore, or have other work performed by utility owners. If such other work is not to be performed in the Contract Documents, then:
 - a. Written notice thereof will be given to the Contractor prior to starting any such other work; and
 - b. If the Contractor believes that such performance will involve additional expense to the Contractor or will require additional time and City and Contractor are unable to agree on entitlement to or on the amount, if any, or extent, if any of any adjustment in the Contract Price or Times that should be allowed as a result of such other work, a claim may be made therefore as provided for in Article 9. The Contractor shall give the City written notice, before the Work begins, of any additional expense that Work will involve. No compensation will be given for additional expense for which such notice has not been given.
2. The Contractor shall afford each contractor who is a party to such a direct contract, each utility owner, and the City (if City's employees are performing such other work) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and shall properly coordinate the Work with theirs. Contractor shall do all cutting, fitting and patching of the Work that may be required to connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut, alter or affect their work with the written consent of Project Officer and the others whose work will be affected. The duties and responsibilities of Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between City and such utility owners and other contractors.

3. If the proper execution or results of any part of the Contractor's Work depends upon work performed by others under this Article, Contractor shall inspect such other work and promptly report to Project Officer in writing any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. The Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with the Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.

W. Substantial Completion

When the Contractor considers the entire work ready for its intended use, the Contractor shall notify, in writing to the City, that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Project Officer and/or City Engineer issue a certificate of Substantial Completion.

Promptly thereafter, the City and the Contractor shall make an inspection of the Work to determine the status of completion. If the City does not consider the Work substantially complete, the City will notify the Contractor in writing giving the reasons therefore. If the City considers the Work substantially complete, then the City shall prepare and deliver to the Contractor a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion.

There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. At the time of delivery of the tentative certificate of Substantial Completion the City will deliver to the Contractor a written recommendation as to division of responsibilities pending final payment between the City and the Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, guarantees and warranties.

The City shall have the right to exclude the Contractor from the Work after the date of Substantial Completion, but the City will allow the Contractor reasonable access to complete or correct items on the tentative list.

II. Compliance with Laws, Ordinance and Regulations

A. General

Should the City or Contractor suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph C shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

B. Cumulative Remedies

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connections with each particular duty, obligation, right and remedy to which they apply.

C. Survival of Obligations

All representations, indemnifications, warranties and guarantees made in, required by, or given

in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract.

D. Controlling Law; Antitrust

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

E. Giving Notice

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered by registered or certified mail postage prepaid (with return receipt requested) to the addressee at the last business address known to the giver of notice.

This also applies to all official contract correspondence, except that such correspondence is not required to have receipts or to be sent by certified mail. The representative of the Contractor for receiving notices and correspondence shall be designated by the Contractor at the preconstruction conference as specified in Paragraph H of Article 2. The representatives of the City, Project Officer and Project Officer shall also be designated at that time.

F. Headings

Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

G. Lien

It is expressly agreed that after any payment has been made by the City to the Contractor for work done, or labor or material supplied as required and described in the Contract, the City will have a lien upon all material delivered to the site by or for the Contractor or any Subcontractor.

H. OSHA Requirements

The Contractor agrees that it will comply with the applicable Virginia Occupational Safety and Health Standards and Regulations while performing services contracted by the City.

The City is subject to the Hazard Communication Standard, 29 CFR 1910.1200 (Standard). The Contractor agrees that it will provide or cause to be provided Material Safety Data Sheets required under the Standard be provided for all hazardous materials supplied to the City and shall be delivered no later than the actual delivery of any hazardous materials to the City. Container labeling meeting the requirements of the Standard shall be appropriately affixed to the shipping or internal containers.

The City reserves the right to refuse shipments of hazardous materials not appropriately labeled or when Material Safety Data Sheets have not been received prior to or concurrent with receipt of the shipment, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. The Contractor further certifies that all material supplied under this contract meets all O.S.H.A. requirements, both Federal and those of the Commonwealth of Virginia; and further certifies that, if the material delivered is subsequently found to be deficient in any of the applicable state or federal O.S.H.A. requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor.

I. Laws And Regulations

The Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither the City, nor the Project Officer, nor City's Consultants shall be responsible for monitoring Contractor's compliance with any Laws or Regulations

If the Contractor observes that the Specifications or Drawings are at variance with any Laws or Regulations, the Contractor shall give the City prompt written notice thereof, and any necessary changes may be authorized by one of the methods indicated in paragraph E under this Article, as appropriate. If Contractor performs any Work knowing or having reason to know that such work is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of Project Officers, architects, attorneys, and other professionals and all court or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under this Agreement.

Changes in Laws or Regulations not known at the time of opening of the Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be subject to an adjustment in the Contract Price or Contract Times. If the City and the Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Article 9.

J. Patent Fee And Royalties

The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of the City or the Project Officer its use is subject to patent rights or copyrights calling for payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the City in the Contract Documents.

To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the City, the Project Officer and officers, directors, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of Project Officers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or relating to any infringement of patent rights, trademarks or trade names, or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

K. Permits And Licenses

Unless otherwise provided in the Contract Documents, City shall obtain and pay for the building permit and fee; the Contractor shall meet all requirements of the permit and fee. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all other construction permits, fees and licenses; and the Contractor shall meet all requirements of those permits and licenses. City may assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. City shall pay all charges of utility owners for connections for providing permanent service to the Work. Contractor shall not include the cost

of the building permit and fee in the bid price.

L. Taxes

The Contractor shall pay all sales, consumer, use and other similar taxes required to be paid by the Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

The facilities that are the subject of the Work qualify for exemption from sales and use tax under Virginia Code Section 58.1-608(52). Exemption may be claimed for the certified pollution control equipment and other materials that remain with the project by completing the appropriate certificate. There is no exemption for materials, equipment purchase or rental, tools, fuel or other tangible personal property used in the performance of this contract. The Contractor is responsible for securing the appropriate exemption certificates from the Virginia Department of Taxation.

M. Overhead High Voltage Lines Safety Act

If any work required herein will be performed within ten (10) feet of an overhead high voltage line, the provisions of Virginia Statute 59.1-406, et. seq., "Overhead High Voltage Line Safety Act" (Act) shall apply. The "person or contractor responsible for the work to be done", as that term is used in the Act, will be interpreted to mean the Contractor. The Contractor shall notify the owner or operator of the high voltage line in the manner prescribed in Section 59.1-411 of the Act in sufficient time prior to the time work is to be commenced to avoid any delays in the work. The City will not pay for lost time, profits, or permit any extension of the work for any delays caused by the failure of the Contractor to make such arrangements in a timely manner.

All costs for the work shall be paid by the Contractor. The City shall reimburse the Contractor for the actual reasonable cost paid to the owner or operator of the high voltage line by the Contractor on presentation to the City by the Contractor of original invoices from the owner or operator of the high voltage line in the same manner as for other Contractor invoices submitted for work performed. Retention, if applicable to the Contract shall not be withheld from the payment to the Contractor by the City. No processing, administrative, or other charges above the actual amount charged by the owner or operator of the high voltage line shall be paid to the Contractor by the City.

N. Indemnification

The Contractor covenants to save, defend, hold harmless, and indemnify the City, and all of its elected and appointed officials, councils and commissions, officers, departments, agencies, agents, and employees (collectively the "City") from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's intentional, negligent, or grossly negligent acts or omissions in performance or nonperformance of its work called for by the Contract Documents. This indemnification shall survive the termination of this Contract.

The indemnification obligations of Contractor under this paragraph shall not be limited in any way by the amount of types of insurance provided by the Contractor under the Agreement.

O. IBC Requirements

The Contractor certifies that all material supplied or used under this Contract meets all current International Building Code (IBC) requirements and the requirements of the Virginia Uniform Statewide Building Code (USBC); and further certifies that, if the material delivered or used in the performance of the work is found to be deficient in any of the applicable state or national code requirements, all costs necessary to bring the material into compliance with the

requirements shall be borne by the Contractor. The City shall be entitled to offset such costs against any sums owed by the City to the Contractor under this Contract.

P. ADA Compliance

The Contractor shall ensure that all Work performed under this Agreement is completed in accordance with the Contract Documents, including Work intended to meet the accessibility requirements of the Americans with Disabilities Act (ADA), and any other applicable regulations and standards.

The Contractor is not required to ascertain whether the Contract Documents meet ADA design standards and guidelines, or other applicable regulations and standards. However, should the Contractor discover any non-conformity with such requirements, the Contractor shall immediately inform the City and its design consultant, if applicable, to allow for corrective action.

The Contractor shall defend and hold the City harmless from any expense or liability arising from the Contractor's non-compliance in meeting its obligations herein. The Contractor shall be responsible for all costs related to permitting delays, redesign, corrective Work, and litigation relating to such non-compliance.

Neither the City Inspector, nor any City staff and/or their third party inspection services, are responsible for inspecting the Work to ensure it is completed in accordance with Contract Documents, the ADA, or other applicable requirements.

Q. Hazardous Materials

The City is subject to the Hazard Communication Standard, 29 CFR §1910.1200 (Standard). The Contractor agrees that it will provide or cause to be provided Material Safety Data Sheets ("MSDS") required under the Standard for all hazardous materials supplied to the City or used in the performance of the work. Such MSDS shall be delivered to the City no later than the time of actual delivery of any hazardous materials to the City or use of such material in the performance of work under the Contract by the Contractor or its subcontractors, whichever occurs first. Container labeling meeting the requirements of the Standard shall be appropriately affixed to the shipping or internal containers.

The City reserves the right to refuse shipments of hazardous materials not appropriately labeled, or when MSDS have not been received prior to or at the time of receipt of the shipment for use by the City or for use by the Contractor in the performance of the Contract, or whenever the material is delivered in a manner inconsistent with any applicable law or regulation. Any expenses incurred due to the refusal or rejection of MSDS are the responsibility of the Contractor. The Contractor shall comply with all federal, state, and local laws governing the storage, transportation, and use of toxic and hazardous materials.

R. Hazardous Waste

1. Hazardous Waste Generator/Hazardous Waste Disposal:

The City Council of City of Fairfax, Virginia and the Contractor shall be listed as Co-generators. The Contractor shall assume all the duties pertaining to the waste Generator, including signing the Waste Shipment Record ("WSR") and manifest. The Contractor shall supply the City Project Officer with the executed original City's Copy of the WSR, as required by applicable regulatory agencies within 35 days from the time the waste was accepted by the initial waste transporter, and prior to request for final payment. A separate WSR shall be submitted for each shipment to the disposal site.

2. Delayed Waste Shipment Records:

The Contractor shall report in writing to the EPA Region III office within forty five (45) days if an executed copy of the WSR is not received from the operator of the disposal site. The report to the EPA regional office shall include a copy of the original WSR and a cover letter signed by the Contractor stating the efforts taken to locate the hazardous waste shipment and the results of those efforts.

3. Temporary Hazardous Waste Storage Prohibited:

The Contractor shall not temporarily store hazardous waste unless pre-approved by the City. If so approved, hazardous waste stored off-site in a temporary facility shall be monitored and records shall be kept on the number of containers, size, and weight. The Contractor shall inform the City when the hazardous waste is to be transported to the final disposal site. The City has the right to inspect the temporary site at any time. The Contractor shall submit copies of all relevant manifests, Waste Shipment Record(s), and landfill receipts to the City Project Officer prior to the request for final payment. All paperwork shall be signed by the Contractor and disposal site operator as required.

S. Asbestos

Whenever and wherever during the course of performing any work under this Contract the Contractor discovers the presence of asbestos or suspects that asbestos is present, the Contractor shall stop work immediately, secure the area, notify the City Project Officer immediately and await positive identification of the suspect material. During the downtime in such a case, the Contractor shall not disturb any surrounding surfaces but shall protect the area with suitable dust covers.

In the event the Contractor is delayed due to the discovery of asbestos or suspected asbestos, then a mutually agreed extension of time to perform the work shall be allowed the Contractor but without additional compensation due to the time extension. Work will not proceed without an Asbestos-Related Work Authorization executed by the City.

T. Prohibition Against Asbestos Containing Materials

No goods or equipment provided to the City or construction material installed shall contain asbestos. If a Contractor or supplier provides or installs any goods, equipment, supplies, or materials that contain asbestos in violation of this prohibition, the Contractor shall be responsible for all costs related to the immediate removal and legal disposal of the goods, equipment or materials containing asbestos. The Contractor shall be responsible for all goods, equipment, supplies or materials installed or provided by any of its employees, agents or subcontractors in connection with the work under this contract. The Contractor also shall reimburse the City for all costs of such goods, equipment, supplies or materials installed. If the Contractor fails to remove and legally dispose of the asbestos-containing goods, equipment or construction materials within ninety (90) days from the date of notice by the City, the City shall remove and dispose of the asbestos-containing goods, equipment or construction materials at the Contractor's expense. The City shall be entitled to offset such expenses against any sums owed by the Contractor to the City under this Contract.

III. Materials

A. Materials Furnished By The Contractor

Unless otherwise specified, all materials and equipment incorporated in the Work under the Contract shall be new. All workmanship shall be accomplished by persons qualified in the respective trades.

B. Substitutes for "Or-Equal" Items

Whenever an item of materials or equipment are specified or described in the Contract Documents by using the names of proprietary items or the names of particular Suppliers, the products of the named Suppliers shall be furnished by the Contractor, except as otherwise provided for herein, and the costs thereof shall be deemed included in the Bid price. Unless identified as "no substitute," "substitute" products may be proposed by the Contractor after the Contract award, but there is no obligation on the part of the Project Officer or Project Officer to accept such products. Contractor shall not be entitled to additional compensation if it is required to provide the listed products. Wherever the term "or equal" is used in the Contract Documents, it shall have the same meaning as the terms "substitute" or "substitution" as used herein. Substitutions will be considered if sufficient information is submitted by Contractor to allow Project Officer and Project Officer to determine that the material or equipment is equivalent or equal to that named. The procedure for review by Project Officer will include the following as supplemented in the General Requirements:

C. Substitute Items

Requests for review of substitute items of material and equipment will not be accepted by Project Officer and Project Officer from anyone other than Contractor. If Contractor wishes to furnish or use a substitute item of material or equipment, Contractor shall make written application to Project Officer and City through the Project Officer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified, be suited to the same use as that specified, and not require any additional cost.

The application will certify that the evaluation and acceptance of the proposed substitute will not prejudice Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with City for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs and delays or schedule impacts that will result directly or indirectly from reviews, acceptance and provision of such substitute, including costs of redesign and claims of other Contractors affected by the resulting change, all of which shall be considered by Project Officer and Project Officer in evaluating the proposed substitute. Project Officer and Project Officer may require Contractor to furnish at Contractor's expense additional data about the proposed substitute.

If a specific means, method, technique, sequence or procedure of the Work is indicated in or required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of the Work acceptable to Project Officer and City only if Contractor submits sufficient information to allow Project Officer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by Project Officer will be similar to that provided in paragraph entitled Substitute Items as applied by Project Officer and as may be supplemented in the General Requirements. Contractor's application for substitution under this paragraph shall contain all information regarding costs and delays or schedule impacts resulting from reviews, acceptance and provision of such substitute.

The Project Officer, Project Officer and the City will be allowed a reasonable time within which to evaluate each proposed substitute as outlined in the paragraphs titled Substitute

or "Or-Equal" Items and Substitute Items. The City will be the final judge of acceptability, and no substitute will be ordered, installed or utilized without City's approval and Project Officer's written acceptance which will be evidenced either by a Change Order or an approved Shop Drawing. City may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute. Project Officer will record time required by Project Officer and Project Officer's consultants in evaluating substitutions proposed by Contractor and in making changes in the Contract Documents occasioned thereby. Whether or not Project Officer accepts a proposed substitute, Contractor shall reimburse City for the charges of Project Officer and Project Officer's consultants for evaluating each proposed substitute and shall bear full responsibility for all impacts to the Contract Price or Contract Time which may result from any delays in the Work while the proposed substitute undergoes review. In the event that any substitute proposed under paragraphs Substitute or "Or-Equal" Items and Substitute Items is accepted, and such substitute is less costly than the Work required by the Contract Documents, the net difference in cost shall benefit the City, and an appropriate Change Order shall be executed.

If any proposed substitution will affect a correlated function, adjacent construction or the work of other contractors or subcontractors, then the necessary changes and modifications to the affected work shall be considered as an essential part of the proposed substitution, to be accomplished by Contractor without additional expense to City, if and when approved.

In the event that a substitute item differs materially from the specified material or equipment, and that difference was not expressly identified in the Contractor's request for the substitution, or in the function or general design of the Work, the City will have authority to require removal and replacement of the substitute.

D. Manufacturer's Directions

Manufactured articles, material, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's directions as approved by the Engineer, unless herein specified to the contrary.

E. Warranty

All material provided to the City shall be fully guaranteed by the Contractor against manufacturing defects within the period of the manufacturer's standard warranty. The Contractor shall provide all manufacturers' warranties to the Project Officer by the date of Final Completion. Such defects shall be corrected by the Contractor at no expense to the City.

All work is guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials, or inferior or faulty workmanship, or work not in accordance with the requirements of the Contract Documents for one (1) year from the date of Final Acceptance of the work by the City in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of Final Acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the City and the Contractor in advance and in a signed writing. The Contractor shall promptly correct any defective work or materials after receipt of a written notice from the City to do so. If the Contractor fails to proceed promptly or use its best efforts and due diligence to complete such compliance as quickly as possible, the City may have the materials or work corrected and the Contractor and its Sureties shall be liable for all expenses and costs incurred by the City.

Nothing in this section shall be construed to establish a period of limitations with respect to other obligations the Contractor may have under this Contract.

F. Inspection, Acceptance And Title Of Materials

Inspection and acceptance by the City will be at the work site in City of Fairfax, Virginia and within five (5) business days of delivery unless otherwise provided for in the Contract. The City will not inspect, accept, or pay for any materials stored off-site by the Contractor. Title and risk of loss or damage to all items shall be the responsibility of the Contractor until Final Acceptance by the City. The City's right of inspection shall not be deemed to relieve the Contractor of its obligation to ensure that all articles, materials and supplies are consistent with specifications and instructions and are fit for their intended use. The City reserves the right to conduct any tests or inspections it may deem advisable to assure that goods or services conform to the specification. The Contractor shall be responsible for maintaining all materials and supplies in the condition in which they were accepted until they are used in the work.

G. Contractor's Title To Materials

No materials or supplies for the Work shall be purchased by the Contractor or any subcontractor subject to any chattel mortgage or under a conditional sale or other agreement by which an interest is retained by the seller. The Contractor warrants that it has good title to, and that it will require all subcontractors to warrant that they have good title to, all materials and supplies for which the Contractor invoices for payment.

H. Title To Materials And Work Covered By Partial Payments

All material and work covered by partial payments made by the City will become the property solely of the City at the time the partial payment is made. However, risk of loss or damage to all items shall be the responsibility of the Contractor until Final Acceptance by the City. This provision will not be construed as relieving the Contractor from having sole responsibility for all materials and work upon which payments have been made and for the restoration of any damaged work or replacement or repair at the City's option of any damaged materials. This provision will not be construed as a waiver of the City's right to require fulfillment of all terms of the Agreement, including full rights under the terms of the Warranty provisions of the Agreement, nor shall payment indicate acceptance of the materials or work.

I. Rejected Work And Materials

1. All materials which do not conform to the requirements of the Contract Documents, are not equal to samples approved by the Project Officer, or are in any way unsatisfactory or unsuited to the purpose, for which they are intended, shall be rejected. Any defective work, whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed and the work shall be re-executed by the Contractor at no cost to the City. The fact that the Project Officer may have previously overlooked such defective work shall not constitute acceptance of any part of it.
2. If the Contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship, when notified to do so by the Project Officer, the City may, by contract or otherwise, replace such material or correct such workmanship and charge the cost to the Contractor. This clause applies during the Contract Term and during any warranty or guarantee period.
3. If the Project Officer and City deem it expedient not to require correction of work which has been damaged or not done in accordance with the Contract, an appropriate adjustment to the Contract Price may be made therefor.

ARTICLE 5 - CITY'S RESPONSIBILITIES

A. Communications to the Contractor

Except in as otherwise provided in these General Conditions the City shall issue all communications to the Contractor through the individual assigned as the Project Officer for the Project.

B. Furnish Data And Pay When Due

The City shall furnish the data required of the City under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due as provided under paragraph .

C. Lands & Easements; Reports & Tests

The City's duties in respect of providing lands and easements and providing Project Officering surveys to establish reference points are set forth in Article 4 refers to the City's identifying and making available to the Contractor copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by the Project Officer in preparing the Drawings and Specifications.

D. Insurance

The City's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in the Agreement.

E. Inspections, Tests And Approvals

The City's responsibility, if any, in respect of certain inspections, tests and approvals is set forth in Article 13 and Supplementary Conditions.

F. Limitations On City's Responsibilities

The City shall not supervise, direct, or have control or authority over, nor be responsible for the Contractor's means methods, techniques, sequences or procedures of construction; the safety precautions and programs related to safety; or the Contractor's failure to perform or furnish the Work in accordance with the Agreement.

The City, will not be responsible for the acts or omissions of the Contractor or of any Contractor's subcontractors, supplier, or of any other person or organization performing or furnishing the Work.

G. Termination Of Services

In connection with City's right to stop Work or suspend Work, Articles 14 and 15 deals with the City's right to terminate services of Contractor under certain circumstances.

H. City's Representatives

The City's agents for this Contract are as follows:

- For execution of the Agreement and any amendments thereto: City of Fairfax, Purchasing Agent.
- For appeals of disputes: City of Fairfax, City Manager.
- For administration of the Contract, Change Orders, Field Orders, and Work Directive Changes: the Project Officer, Director of Department of Public Works or his designated temporary replacement.

I. Status Of Project Officer

The Project Officer shall be the City's representative during the construction period. The Project Officer shall have authority to suspend the Work whenever such suspension may be necessary in the responsible opinion of the Project Officer. The Project Officer shall also have authority to reject all work and materials that do not conform to the Contract and to decide questions that arise in the execution of the Work.

J. Project Officer's Decisions

The Project Officer will, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

K. Inspection of Work

The Engineer and representatives of any public authority having jurisdiction shall, at all times, have access to the Work while in progress. The Contractor shall provide suitable facilities for such access and for proper observation of the Work and shall conduct all special tests required by the specifications, the Engineer's instructions, and any laws, ordinances or the regulations of any public authority applicable to the Work. Nothing in this section shall abrogate or otherwise limit or relieve the Contractor's independent duty to inspect the Work.

L. Inspection of Materials

All articles, materials, and supplies purchased by the Contractor for the Work are subject to inspection by the Project Officer upon delivery to the site and during manufacturing or fabrication. The City reserves the right to return for full credit, at the risk and expense of the Contractor, all or part of the articles, materials, or supplies furnished contrary to specifications and instructions. Nothing in this section shall abrogate or otherwise limit or relieve the Contractor's independent duty to inspect the materials.

M. Examination of Completed Work

If the Engineer requests it, the Contractor, at any time before acceptance of the Work, shall remove or uncover such portions of the finished work as may be directed. After examination, the Contractor shall restore said portions of the work to the standard required by the Specifications. Should the work thus exposed or examined prove acceptable, then the uncovering or removing, and the replacing of the covering or making good of the parts removed shall be paid for as extra work, but should the work so exposed or examined prove unacceptable, then the uncovering, removing, restoration, and/or replacing shall be at the Contractor's expense.

N. Right To Suspend Work

The City shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as the City may deem necessary or desirable. Any such suspension shall be in writing to the Contractor and the Contractor shall obey such order immediately and not resume the Work until so ordered in writing by the City. The Contractor may be entitled to an extension of the Contract Time subject to Section No. 5 – CONTRACT TERM of the Agreement. No such suspension of the Work shall be the basis for a claim by the Contractor for any increase in the Contract Amount provided that the suspension is for a reasonable time under the circumstances then existing. If the suspension of Work is caused by the City's belief that non-conforming work is being installed, and subsequent investigation proves that the Work was non-conforming, the Contractor shall not be awarded additional time or costs.

O. Lands By City

The City shall provide the lands shown on the Drawings upon which the Work under the Contract is to be performed and to be used for rights of way and for access. In case all of the lands, rights-of-way or easements have not been obtained as herein contemplated before construction begins, the Contractor shall begin its work on such lands and rights-of-way as the

City may have previously acquired.

P. Separate Contracts

The City reserves the right to let other contracts in connection with this Project. The Contractor shall afford other contractors reasonable access to the Project, including the opportunity for the delivery and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with the work of other such contractors.

If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Project Officer any defects in such work that renders it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's work, except as to defects which may develop in other contractor's work after its execution.

If the Contractor or any of the Contractor's subcontractors or employees cause loss or damage to any separate contractor on the Work, the Contractor agrees to settle or make every effort to settle or compromise with such separate contractor. If such separate contractor sues the City on account of any loss so sustained, the City shall notify the Contractor, who shall indemnify and save the City harmless against any expense, claim or judgment arising therefrom, including reasonable attorney's fees.

Q. Eliminated Items

The Project Officer may, upon written notice to the Contractor, eliminate item(s) from the Contract. Payment will not be made for such item(s) so eliminated; except that the Contractor will be compensated for the actual cost of any work performed for the installation of such item(s) and the net cost of materials purchased before the item(s) was eliminated from the Contract, including freight and tax costs, as evidenced by invoice. If the City notifies the Contractor of such elimination at least fifteen (15) calendar days prior to scheduled installation of such item(s), then no additional compensation will be made for overhead or anticipated profit.

The Project Officer will be the City's representatives during the construction period. The duties and responsibilities and the limitations of authority of the Project Officer as the City's representatives during construction are set forth in the Contract Documents, and will not be extended without written consent of the City.

R. Visits to the Site

The Project Officer will make visits to the Site at intervals appropriate to the various stages of the Work as the Project Officer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of the Contractor's executed Work. Based on the information obtained during such visits and observations, the Project Officer, for the benefit of the City, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Project Officer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. The Project Officer's efforts will be directed toward providing for the City a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, the Project Officer will keep the City informed of the progress of the Work and will endeavor to guard the City against defective Work. The Project Officer's visits and observations are subject to all the limitations on the Project Officer's authority and responsibility set forth in this document. Particularly, but not without limitation, during or as a result of the Project Officer's visits and observations of Contractor's Work, neither the Project Officer will supervise, direct, control, or have authority over or be responsible for the Contractor's means, methods, techniques, sequences or

procedures of the construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with the Laws and Regulations applicable to the performance of the Work.

S. Authorized Variations in Work

Through the Project Officer, the City may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are consistent with the overall design intent of the Contract Documents compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on the City and also on Contractor, who shall perform the Work involved promptly. If the City or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefore as provided in Article 9.

The Contractor shall sign and return Field Orders within twenty four (24) hours of receipt to be followed by signature of Project Officer at which time Field Orders will become binding on Contractor. In lieu of returning the signed Field Order, the Contractor may, within twenty four (24) hours of receipt, return the unsigned Field Order with a written statement of its reasons for doing so.

T. Rejecting Defective Work

The Project Officer will have authority to disapprove or reject Work which Project Officer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

The Project Officer will also have authority to require special inspection or testing of the Work as provided in Article 7, whether or not the Work is fabricated, installed or completed.

U. Determinations For Unit Prices

The Project Officer will determine the actual quantities and classifications of Unit Price Work performed by the Contractor. The Project Officer will review with the Contractor the Project Officer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

The Project Officer's written decision thereon will be final and binding (except as modified by the Project Officer to reflect changed factual conditions or more accurate data) upon the City and the Contractor, subject to the provisions of Article 6.

V. Limitations On Project Officer's Authority And Responsibilities

The Project Officer's authority and responsibility is described in the Article 8 or under any other relevant provisions in the Contract Documents. The Project Officer will not supervise, direct, control, or have authority over or be responsible for the Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with Laws and Regulations applicable to the performance of the Work.

The Project Officer will not be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents. The Project Officer will not be responsible for the acts and omissions of the Contractor or of any of the Contractor's subcontractors and suppliers, or of any other individuals or entities performing any of the Work. The Project Officer's review of the final Application for Payment and accompanying documentation and all maintenance and

operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered under this Article, or any other relevant provisions in the Contractor Documents will only be to determine generally that their content complies with the requirement of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with the Contract Documents.

ARTICLE 6 – AMENDING, SUPPLEMENTING, AND CHANGING CONTRACT DOCUMENTS

A. Authorized Changes In The Work

Without invalidating the Agreement and without notice to any surety, the City may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Change Order, a Field Order or a Work Directive Change. Upon receipt of any such document, the Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

If the City and the Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Times that should be allowed as a result of a Work Directive Change, Contractor may make a claim therefore as provided in Article 9.

B. Unauthorized Changes In The Work

Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph D (Amending and Supplementing Contract Documents) under Article 2 – Preliminary Matters, except in the case of an emergency.

C. Execution of Change Orders

The City and the Contractor shall execute appropriate change Orders recommended by the Project Officer covering:

1. changes in the Work which are (i) ordered by the City pursuant to paragraph A, above, (ii) changes which are required because of acceptance of defective Work under paragraph H, below, or the City's correction of defective Work under paragraph I, below, or (iii) or as agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Directive Change; and
3. changes in the Contract Price or Contract Times which embody the substance of any written recommendation rendered by the Project Officer to the City pursuant to paragraph H, below, provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of Contract Documents and applicable Laws and Regulations, but during any such appeal, the Contractor shall carry on the Work and adhere to the progress schedule as provided in paragraph S (Continuing the Work) under Article 4.

D. Notification To Surety

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Contractor's responsibility, and the amount of each applicable Bond will be adjusted to reflect the effect of any such change.

E. Requests For Proposals, Proposal Responses and Change Orders

At any time Project Officer may request a proposal from the Contractor for a proposed

change(s) in the Work. Within fifteen (15) calendar days after receipt of such request, the Contractor shall submit a written detailed proposal for the change(s) in the Work. The proposal shall include an itemized estimate of all costs that will result directly or indirectly from the proposed change and include an assessment of the impact of the proposed change on the overall project schedule. Unless otherwise directed, itemized estimates shall be in accordance with the rules governing the Cost of Work as outlined in Article 10. Proposals shall be in sufficient detail reasonably to permit an analysis by Project Officer of all material, labor, equipment, subcontracts, overhead costs and fees, and shall cover all Work involved in the change, whether such Work was deleted, added, changed or impacted. Each cost category shall be supported with substantiating documentation which may include, but is not limited to quantity takeoffs, quotations, invoices, cost records, certified payrolls and identification of estimating guidelines, and resources.

The subcontract portions of each proposal shall be similarly supported. Itemized schedule adjustments shall be in sufficient detail to permit an analysis of impact. If the City elects to proceed with the change covered by the request for proposal, such change will be authorized by execution of proper documentation in accordance with paragraph A (Authorized Changes in the Work) under Article 6. Notwithstanding the request for proposal, Contractor shall carry on the Work and maintain the progress schedule. Project Officer and the City shall have fifteen (15) calendar days after receipt of the detailed proposal to respond in writing. Delays in the submittal of the written and detailed proposal will be considered Non-prejudicial as defined in the General Conditions.

Any adjustment in Contract Price or Contract Times stated in a Change Order shall comprise the total price or time adjustment due or owed to the Contractor for the Work or changes defined in the Change Order. By executing the Change Order, the Contractor acknowledges and agrees that the stipulated price or time adjustments cover all costs and delays for all work contained in the Change Order, including costs and delays associated with the interruption of schedules, extended overheads, delay, and cumulative impacts or ripple effect on all other work under this Contract. Signing of the Change Order constitutes full and mutual accord and satisfaction for the adjustment in Contract Price or Times as a result of increases or decreases in costs and time of performance caused directly and indirectly from the change. Execution of the Change Order constitutes an agreement between the City and Contractor that the Change Order represents an equitable adjustment to the Contract Price or Times and that Contractor waives all rights to claim further adjustments related to this Change Order.

In the event that the City and the Contractor are unable to agree as to the reasonable cost and time to perform the change (deletions or additions) in the Work, the City and the Project Officer may make a unilateral determination of the reasonable cost and time to perform the change in the Work, based upon their own estimates, the Contractor's submission, or a combination thereof, and issue a Unilateral Change Order for the amounts of cost and time so determined and which, if issued, shall become binding upon the Contractor. The Unilateral Change Order will enable the City to make payments for Work performed thereunder, and Contractor will be paid a reasonable amount for work completed. Contractor may appeal the Unilateral Change Order within fifteen (15) days of receipt, as provided in Article 6. Failure of the parties to reach agreement regarding the cost and time of performing the change in the Work shall not relieve the Contractor from performing the change in the Work promptly and expeditiously.

The Contractor is obligated, in the performance of changes in the Work, to mitigate all cost and time related to any changes and shall identify in writing to include all work from a work directive change entered as an activity in the current approved progress schedule on the date the work directive change is issued and if it is an impact will be the bases for TIA(s), when requested by the City, the actions taken in that regard.

F. Change Of Contract Price

1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at his expense without change in the Contract Price.
2. The Contract Price may only be changed by a City approved Change Order. Any claim for an adjustment in the Contract Price shall be based on written notice submitted by the Contractor and delivered to the City and Project Officer in accordance with Article 6.
3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price shall be determined by the Project Officer in one of the following ways:
 - a. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved subject to the provisions of Paragraph J (Unit Price Work) under Article 8.
 - b. Where the Work is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include allowance for overhead and profit not necessarily in accordance with Paragraph E (Contractor's Fee) under Article 8; or
 - c. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Articles 6 and 8, on the basis of the Cost of the Work (determined as provided in Paragraph E (Contractor Fee) plus a Contractor's Fee for overhead and profit (determined as provided in paragraph J (Delays for Projects requiring Critical Path Method Scheduling).
 - d. By any other method permitted under the City, Ordinances and or Virginia Public Procurement Act, as amended.

G. Contractor's Fee

The Contractor may be allowed to charge a certain fee cover its overhead and profit. That certain fee shall be determined as follows:

1. The allowable percentage markups for overhead and profit for a change to the Work performed by the Contractor's own forces or performed by the Contractor's subcontractor, at any tier, shall not exceed the percentages for each category listed below:
 - a. For costs incurred under Paragraph A, above, the Contractor's fee shall not exceed ten percent (10%).
 - b. For costs incurred under Paragraph A, the Contractor's fee shall not exceed the maximum total incurred under this Paragraph G.
 - c. The total for all Contractor's, Subcontractors and all intervening tiers of Subcontractors', regardless of the number of intervening tiers markup for overhead and profit for the work performed in a change to the Work shall be a total maximum of twelve percent (12%).
2. No fee shall be payable on the basis of cost itemized under paragraphs A and B herein.
3. The amount of credit to be allowed by the Contractor to the City for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in the Contractor's fee by an amount equal to half the percentage on such net decrease; and

4. When both additions and credits are involved in any one change, the adjustment in the Contractor's fee shall be computed on the basis of the net change in accordance with paragraph F, above inclusive.

H. Change of Contract Times

The Contract Times may only be changed by a City approved Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the claim to the Project Officer and the other party to the Contract and delivered in accordance with Article 9.

Any adjustment of the Contracts Time covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of Paragraph I, below, as applicable.

I. Computation of Time

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day. Any reference to days made in the Contract Documents shall be construed as calendar days unless specifically defined or identified otherwise.

J. Delays For Projects Requiring Critical Path Method Scheduling

1. Where the Contractor is prevented from completing any part of the Work on the critical path within the Contract Times due to delay beyond the control of the Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in this Article. Delays to the Work on the Critical Path beyond the control of the Contractor shall include, but not be limited to, acts or neglect by the City, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 6, fires, floods, epidemics, abnormal weather conditions, or acts of God.
2. If the City or other contractors or utility owners performing other work for the City as contemplated by Article 6, or anyone for whom the City is responsible, delays, disrupts, or interferes with the performance or progress of the Work on the critical path, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work on the critical path within the Contract Times.
3. If the Contractor is delayed in the performance or progress of the Work on the critical path by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of the City, or other causes not the fault of and beyond control of the City and Contractor, then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work on the critical path within the Contract Times. Such an adjustment shall be the Contractor's sole and exclusive remedy for the delays described in this Article 6.
4. The City and the City's related entities shall not be liable to the Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of Project

Officers, architects, attorneys, and other professionals and all court or other dispute resolution costs) sustained by the Contractor on or in connection with any other project or anticipated project.

5. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Times for delays within the control of the Contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the Contractor.
6. The notice of delay shall be submitted to the City at the time of the event causing the impact, and as referenced in Paragraph R (Decisions on Requirements of the Contract Documents, Acceptability of Work and Disputes) under Article 9, and in accordance with and other applicable provisions in the Contract Documents.

K. Delays for Projects Not Requiring Critical Path Method Scheduling

1. Where the Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of the Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided in Paragraph H (Change of Contract Times) under Article 6. Delays beyond the control of the Contractor shall include acts or neglect by the City, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 6, fires, floods, epidemics, abnormal weather conditions, or acts of God.
2. If the City or other contractors or utility owners performing other work for the City as contemplated by Article 6, or anyone for whom the City is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then the Contractor will be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. The Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to the Contractor's ability to complete the Work within the Contract Times.
3. If the Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of the City, or other causes not the fault of and beyond control of the City and Contractor, then the Contractor will be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to the Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be the Contractor's sole and exclusive remedy for the delays described in this Article 6.
4. The City and the City's related entities shall not be liable to the Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of architects, attorneys, and other professionals and all court or other dispute resolution costs) sustained by the Contractor on or in connection with any other project or anticipated project.
5. The Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of the Contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of the Contractor.

ARTICLE 7 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK; SUSPENSION AND TERMINATION

A. Notice Of Defects

Prompt notice of all defective Work of which the City has actual knowledge will be given to the Contractor. All defective Work may be rejected, corrected, or accepted as provided under this Article 7.

B. Access To Work:

The City, its consultants and other representatives of the City, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting and testing. The Contractor shall provide them proper and safe conditions for such access and advise them of the Contractor's safety procedures and programs so that they may comply therewith as applicable.

C. Tests And Inspection

1. The Contractor shall give the Project Officer timely notice of readiness of the Work for all required inspections, tests or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
2. The City shall employ and pay for the services of an independent testing laboratory to perform all inspections and tests, or approvals required by the Contract Documents except as otherwise noted in the Contract Documents except:
 - a. for inspections, tests or approvals covered by paragraphs E (the City May Stop Work) and F (Correction or Removal of Defective Work), below;
 - b. that costs incurred in connection with tests or inspections conducted pursuant to paragraph H (Acceptance of Defective Work) shall be paid as provided in said paragraph; and
 - c. as otherwise specifically provided for in the Contract Documents.
3. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved, by an employee or other representative of such public body the Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith and furnish the Project Officer the required certificates of inspection, testing or approval.
4. The Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspection or testing required in connection with the City's, Project Officer's, or Project Officer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work. Such inspections, tests or approvals shall be performed by organizations acceptable to the City.
5. If any Work (or the work of others) that is to be inspected, tested or approved is covered by the Contractor without written concurrence of the Project Officer, it must, if requested by the Project Officer, be uncovered for observation.
6. Uncovering Work as provided in Paragraph D (Uncovering Work) shall be at the Contractor's expense unless the Contractor has given the Project Officer timely notice of the Contractor's intention to cover the same and the Project Officer has not acted with reasonable

promptness to request that such item not be covered in response to such notice.

D. Uncovering Work:

1. If any work is covered contrary to the written request of the Project Officer, it shall be, be uncovered for the Project Officer's observation and replaced at the Contractor's expense, if so is requested by the Project Officer.
2. If the Project Officer considers it necessary or advisable that covered Work be observed by the City Engineer or inspected or tested by others, the Contractor, at Project Officer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Project Officer may require, that portion of the Work in question furnish all necessary labor, material and equipment at Contractor's expense.
3. If it is found that the uncovered Work is defective, the Contractor shall pay all claims, costs, losses and damages (including but not limited to all fees and charges of Project Officers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or related to such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to all costs of repair or replacement of work of others); and the City shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount or extent thereof, the City may make a Claim therefore as provided in Article 9.
4. If, the uncovered Work is not found to be defective, the Contractor may be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, the Contractor may make a Claim therefore as provided in Article 9.

E. City May Stop The Work

If the Work is defective, or if the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, the City may order the Contractor to stop the Work or any portion thereof, until the cause for such order is eliminated, however, this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor, any subcontractor, any supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

F. Correction Or Removal Of Defective Work

Promptly after receipt of notice, the Contractor shall correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Project Officer, remove it from the Site and replace it with Work that is not defective. The Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of the Project Officers, architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

When correcting defective Work under the terms of this paragraph, the Contractor shall take no action that would void or otherwise impair the City's special warranty and guarantee, if any, on said Work.

The Contractor shall not be entitled to an extension of the Contract Time or an increase in the Contract Price for correcting or removing defective Work.

G. Correction Period:

1. If, within one (1) year after the date of Substantial Completion (or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by the City or permitted by Laws and Regulations as contemplated under Article 5 is found to be defective, the Contractor shall within fifteen (15) days after notice from and without cost to the City, and in accordance with the City's written instructions:
 - a. Repair such defective land or areas; or
 - b. Correct such defective Work, or
 - c. If the defective Work has been rejected by the City, remove it from the Project and replace it with Work that is not defective, and
 - d. Satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
2. If the Contractor does not promptly comply with the terms of the City's written instructions, or in an emergency where delay would cause serious risk of loss or damage, the City may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims costs, losses, and damages (including but not limited to fees and charges of architects, attorneys and other professionals and all court or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by the Contractor.
3. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
4. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph G (Correction Period) under Article 7, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
5. The Contractor's obligations under this Article 7 are in addition to other obligations or warranties. The provisions of this Article 7 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

H. Acceptance Of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, the City (and, prior to Project Officer's recommendation for final payment) prefers to accept it, the City may do so. The Contractor shall pay all claims, costs losses and damages (including but not be limited to all fees and charges of architects, attorneys and other professionals and all court or other dispute resolution costs) attributable to the City evaluation of and determination to accept such defective Work (such costs to be approved by Project Officer as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by the Contractor pursuant this sentence. If any such acceptance occurs prior to the City's making of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the City shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Work so accepted. If the parties are unable to agree as to the amount thereof, the City may make a Claim therefore as provided in

Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Contractor to the City. The Contractor may appeal the City's action in accordance with Article 9.

I. City May Correct Defective Work

1. If the Contractor fails within fifteen (15) days after written notice by the Project Officer to correct defective Work or to remove and replace rejected Work as required by the Project Officer in accordance with paragraph D (Uncovering Work) under Article 7, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, the City may, after seven days' written notice to Contractor, correct and remedy any such deficiency at the cost of the Contractor.
2. In exercising the rights and remedies under Paragraph I (the City May Correct Defective Work), the City shall proceed expeditiously. In connection with such corrective and remedial action, the City may exclude the Contractor from all or part of the Site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, take possession of the Contractor's tools, appliances, equipment and machinery at the Site and incorporate in the Work all materials and equipment stored at the site or for which the City has paid the Contractor but which are stored elsewhere. The Contractor shall allow the City and the City's representatives, agents and employees such access to the Site as may be necessary to enable the City to exercise its rights and remedies under this paragraph.
3. Such claims, costs, losses and damages will include but not be limited to all costs, losses, and damages will include but not be limited to all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the Contractor's defective Work.
4. The Contractor shall be allowed neither an extension of the Contract Time nor an increase in the Contract Price because of any delay in performance of the Work attributable to the exercise by the City of the City's rights and remedies hereunder.

J. City May Suspend Work:

1. The City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to Contractor and Project Officer which notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an appropriate adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any suspension if Contractor makes an approved claim therefore as provided in Article 9.
2. If the City stops Work or suspends the Contractor's services or any portion thereof because of the Contractor's failure to prosecute the Work without endangering persons and property, or otherwise for the Contractor's negligent performance or failure to perform the Work, the Contractor will not be entitled to an adjustment of the Contract Price or an extension of Contract Times.

K. City May Terminate For Cause

1. The occurrence of any one or more of the following events will justify termination for cause:
 - a. If Contractor commences a voluntary case under any chapter of the Bankruptcy

Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

- b. If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time relating to bankruptcy or insolvency;
 - c. If Contractor makes a general assignment for the benefit of creditors;
 - d. If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;
 - e. If Contractor admits, in writing, an inability to pay its debts generally as they become due;
 - f. The Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established and adjusted from time to time pursuant to provisions of Contract Documents);
 - g. The Contractor's disregard Laws or Regulations of any public body having jurisdiction;
 - h. The Contractor's disregard of the authority of Project Officer; or
 - i. If the Contractor otherwise violates in any substantial way any provisions of the Contract Documents.
2. If one or more of the events identified in this paragraph occur, the City may, after giving the Contractor (and the Surety, if there be one) fifteen (15) days' written notice, terminate the services of the Contractor, exclude the Contractor from the site and take possession of the Work and of all of the Contractor's tools, appliances, equipment and machinery at the site and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion), incorporate in the Work all materials and equipment the City stored at the site or for which the City has paid the Contractor but which are stored elsewhere, and complete the Work as the City may deem expedient.
3. If the City proceeds as provided in above the Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to fees and charges of the architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) sustained by the City arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs losses, and damages exceed such unpaid balance, Contractor shall pay the difference to City. Such claims, costs losses, and damages incurred by the City will be reviewed by the Project Officer as to reasonableness and, when so approved by the Project Officer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph the City shall not be required to obtain the lowest price for the Work performed.

4. If public necessity requires the use of materials or equipment not conforming to the Contract Documents in order to complete the Work, the City may accept and pay for such materials or equipment, and an appropriate adjustment in the Contract Price will be made.
5. The Contractor's services will not be terminated if the Contractor begins within fifteen (15) days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt of said notice.
6. Where the Contractor's services have been so terminated by the City, the termination will not affect any rights or remedies of the City against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due to the Contractor by the City will not release the Contractor from liability.
7. If and to the extent that the Contractor has provided a performance bond under the provisions of the Contract Documents, the termination procedures of that bond shall supersede the provisions of this paragraph.

L. City May Terminate For Convenience

Upon fifteen (15) days written notice to Contractor and Project Officer, the City may, without cause and without prejudice to any other right or remedy of the City, elect to terminate the Agreement. In such case, the Contractor shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with the uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all claims, costs, losses, and damages, (including but not limited to all fees and charges of the architects, attorneys, and other professions and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
4. for reasonable termination expenses directly attributable to termination.

The Contractor shall not be paid on account of losses or anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

M. Contractor May Stop Work or Terminate

If, through no act or fault of (i) the Contractor, the Work is suspended for a more than ninety (90) consecutive days by the City or under an order of court or other public authority, or (ii) the Project Officer fails to act on any Application for Payment within thirty (30) days after it is submitted, or (iii) the City fails for forty five (45) days to pay the Contractor any sum finally determined to be due, then the Contractor may upon fifteen (15) days of written notice to the City and provided the City does not remedy such suspension or failure within that time, terminate the Contract and recover from the City payment on the same terms as provided in the Contract Documents.

In lieu of terminating the Contract and without prejudice to any other right or remedy, if Project

Officer has failed to act on an Application for Payment within thirty (30) days after it is submitted, or the City has failed for forty five (45) days to pay the Contractor any sum finally determined to be due, the Contractor may, fifteen (15) days after written notice to the City, stop the Work until payment is made of all such amounts due the Contractor.

The provisions of this paragraph are not intended to preclude the Contractor from making a Claim under Article 9 for an adjustment in the Contract Price or Contract Times or otherwise for expenses or damage directly attributable to the Contractor's stopping the Work as permitted by this paragraph. The provisions of this paragraph shall in no way be construed to relieve the Contractor of its obligation under this Agreement to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the City. No compensation shall be due to Contractor for lost profit.

ARTICLE 8 – MEASUREMENT, PAYMENT AND DETERMINATION OF COSTS

A. Schedule of Values

The schedule of values established under Article 2 will serve only as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Project Officer. The schedule of values will not be used as the basis of adjustments in the Contract Price for added or deleted Work.

B. Progress Payment

1. At least ten (10) days before each progress payment is scheduled (but not more often than once per month). The Contractor shall submit to the Project Officer for review an Application for Payment filled out and signed by the Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and stored at the Site or at another location agreed to in writing, the Application shall also be accompanied by a bill of sale, invoice or other documentation warranting that the City has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the City's interest therein, all of which must be satisfactory to the City.
 - a. Beginning with the second Application for Payment each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
 - b. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
2. At the City's discretion, the City may make partial or full payment to Contractor without requiring such supporting documentation, and any payment so made shall not impair the obligations of any surety or sureties on any bond or bonds furnished under this Contract. Retainage held by Contractor with respect to any progress payments to any Subcontractor shall not exceed five percent.

C. Costs Included

The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by the City, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall use tables from RS Means Bare Cost Columns, Open Shop (Non Union) for labor, material, and equipment cost adjusted to include workers compensation, FUI, SUI, FICA, Builder's Risk and Public Liability Insurance, no additional hours shall be beyond the hours included in RS Means, RS Means cost to be adjusted by the regional factor for Fairfax City, Virginia, Electricians shall use productivity from table in NECA Manual of Labor Units column (2) two (instead of RS Means), no General Condition costs (labor, material, equipment) shall be included, shall include only the following items, and shall not include any of the costs itemized in paragraph D (Cost Excluded) under Article 8:

1. Payroll costs for employees in the direct employee of the Contractor in the performance of the Work under based on paragraph A, above, schedules of job classifications agreed upon by the City and the Contractor. Such employees shall include without limitation superintendents, foreman, and other personnel employed full time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of after regular working hours, on Saturday, Sunday or legal holidays shall be included in the above to the extent authorized by the City.
2. Cost of all materials and equipment furnished and incorporated in the Work, based on paragraph A, above, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to the Contractor unless the City deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the City. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the City, and the Contractor shall make provisions so that they may be obtained.
3. Payments made by the Contractor to the subcontractors for Work performed by subcontractors, based on paragraph A, above. If required by the City, the Contractor shall obtain competitive bids from the subcontractors acceptable to the Contractor and shall deliver such bids to the City who will then determine which bids will be accepted. If a subcontract provides that the subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the subcontractor's Cost of the Work shall be determined in the same manner as the Contractor's Cost of the Work and fee. All subcontractors' agreement shall be subject to the provisions of the Contract Documents.
4. Costs of special consultants (including but not limited to architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

Supplemental costs including the following:

1. The proportion of necessary transportation, travel and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Work.
2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work.
3. Rentals of all equipment and machinery and the parts thereof whether rented from the Contractor or others in accordance with rental agreements approved by the City, and the costs of transportation, loading, unloading, assembly, dismantling and removal thereof. All such costs shall be in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
4. Sales, consumer, use and other similar taxes related to the Work, and for which the Contractor is liable, imposed by Laws and Regulations.

5. Deposits lost due to causes other than negligence of the Contractor, any subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by the Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with the Agreement), provided such losses and damages have resulted from causes other than the negligence of the Contractor, any subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses, if not caused by the negligence of the Contractor or any subcontractors, shall include settlements made with the written consent and approval of the City. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's Fee.
7. The cost of utilities, fuel and sanitary facilities at the Site, to the extent they are required by the additional work.
8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expresses, and similar petty cash items to the extent they are required by the additional work.
9. The costs of premiums for all bonds and insurance Contractor is required to purchase and maintain because of changes in the Work.

D. Costs Excluded

The term Cost of the Work shall not include any of the following:

1. Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, safety managers, Project Officers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor, whether at the Site or in Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph A, above, all of which are to be considered administrative costs covered by the Contractor's Fee.
2. Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.
3. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of the Contractor, any subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
5. Other overhead or general expense costs of any kind and the cost of any item not specifically and expressly included in paragraphs A, above.

6. Extended office overhead (except office and temporary facilities at the site as referenced in 1, above or lost profit associated with delays of any type. Such costs are considered to be administrative costs covered by Contractor's fee.
7. Costs associated with the preparation of Change Orders (whether or not ultimately authorized), cost estimates, schedules, preparation of TIA, any changes or updates to the schedule related to the change order or the preparation or filing of claims.

E. Contractor's Fee

When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when the Claim for adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph G (Contractor's Fee) under Article 6.

F. Documentation

Whenever the cost of any Work is to be determined pursuant to the paragraph G (Contractor's Fee) under Article 6, the Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to the Project Officer an itemized cost breakdown together with supporting data.

G. Allowances

It is understood that the Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to the Project Officer.

H. Cash Allowances

The Contractor agrees that:

1. The cash allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
2. The Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances and no demand for additional payment on account of any such costs will be valid.

I. Contingency Allowances

The Contractor agrees that a contingency allowance, if any, is for the sole use of the City to cover unanticipated costs.

Prior to the final payment, an appropriate Change Order will be issued as approved by the City, to reflect actual amounts due to the Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

J. Unit Price Work

1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
2. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for

the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by the Contractor will be made by Project Officer subject to the provisions of this Article.

3. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
4. The City or the Contractor may make a Claim for an adjustment in the Contract Price in accordance with Article 9 if:
 - a. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. there is no corresponding adjustment with respect any other item of Work; and
 - c. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or the City believes that the City is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

K. Contractor's Warranty of Title

The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the City free and clear of all Liens no later than the time of payment.

L. Review of Applications for Progress Payment

1. The Project Officer will, within ten days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the City, or return the Application to Contractor indicating in writing Project Officer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Project Officer's recommendation of any payment requested in an Application for Payment will constitute a representation by the Project Officer to City, based on Project Officer's observations on the Site of the executed Work as an experienced and qualified design professionals and on Project Officer's review of the Application for Payment and the accompanying data and schedules that to the best of Project Officer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under this Article and to any other applicable provisions of Contract Documents; and
 - c. The conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Project Officer's responsibility to observe the Work.
3. By recommending any such payment Project Officer will not thereby be deemed to have represented that (i) inspections made to check the quality or the quantity of the Work as it

has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to the Project Officer in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by the City or entitle the City to withhold payment to Contractor.

4. Neither Project Officer's review of the Contractor's Work for the purposes of recommending payments nor Project Officer's recommendation of any payment, including final payment, will impose responsibility on the Project Officer to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for Contractor's failure to comply with Laws and regulations applicable to Contractor's performance of the Work. Additionally, said review of recommendation will not impose responsibility on the Project Officer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to the City free and clear of any liens.
5. The Project Officer may refuse to recommend the whole or any part of any payment if, in Project Officer's opinion, it would be incorrect to make such representations to the City. Project Officer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Project Officer's opinion to protect the City from loss because:
 - a. The Work is defective, or completed Work has been damaged requiring correction or replacement,
 - b. The Contract Price has been reduced by Written Amendment or Change Order,
 - c. The City has been required to correct defective work or complete Work in accordance with paragraph F (Correction or Removal of Defective Work) under Article 7.
 - d. Project Officer's actual knowledge of the occurrence of any of the events enumerated in paragraph K (City May Terminate for Cause) under Article 7.
6. Thirty (30) days following presentation of the Application for Payment to the City that is approved by the Project Officer for the amount requested (subject to the provisions of Paragraph B (Progress Payment) under Article 8) become due, and when due will be paid by the City to the Contractor.

M. Reduction in Payment

1. The City may refuse to make payment of the full amount recommended by Project Officer because:
 - a. claims have been made against the City on account of Contractor's performance or furnishing of the Work;
 - b. or Liens have been filed in connection with the Work except where Contractor has delivered a specific Bond satisfactory to the City to secure the satisfaction and discharge of such Liens;
 - c. There are other items entitling the City to a set-off against the amount recommended; or
 - d. The City has actual knowledge of the occurrence of any of the events enumerated in

paragraph B (the City May Terminate for Cause) under Article 7.

2. If the City refuses to make payment of the full amount requested by the Contractor, the City must give the Contractor immediate written notice stating the reason(s) for such action and promptly pay the Contractor any amount remaining after deduction of the amount so withheld. The City shall promptly pay the Contractor the amount so withheld, or any adjustment thereto agreed to by the City and the Contractor, when the Contractor corrects to the City's satisfaction the reasons for such actions.
 - a. If it is subsequently determined that the City's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph B (Progress Payment) under Article 8.
 - b. All moneys not paid when due as provided in Article 8 shall bear interest at twelve (12%) percent per annum.

N. Partial Utilization

Use by the City at the City's option of any substantially complete part of the Work which has specifically been identified in the Contract Documents, or which the City and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the City for its intended purpose without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to the Substantial Completion, of all the Work , subject to the following conditions:

1. The City at any time may request that the Contractor in writing to permit the City to use any such part of the Work which the City believes to be ready for its intended use and substantially complete. If Contractor agrees, that such part of the Work is substantially complete, the Contractor will certify to the City that such part of the Work is substantially complete and request to issue a certificate of Substantial Completion for that part of the Work. The Contractor may at any time notify the City in writing that the Contractor considers any such part of the Work ready for its intended use and substantially complete and request that the City to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, the City and the Contractor shall make an inspection of that part of the Work to determine its status of completion. If the City does not consider that part of the Work to be substantially complete, the City will notify the Contractor in writing giving the reasons therefore. If Project Officer considers that part of the Work to be substantially complete, the provisions of paragraphs B (Progress Payment) and M (Reduction in Payment) under Article 8 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of the Supplementary Conditions regarding property insurance.

O. Final Inspection

Upon receipt of written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the City will make a final inspection, and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The Contractor shall immediately take such measures as are necessary to remedy all such deficiencies.

P. Final Application for Payment

1. After the Contractor has in the opinion of the Project Officer, satisfactorily completed all

corrections identified during the final inspection and has delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph N (Record Documents) under Article 5) and other documents the Contractor may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied (except as previously delivered) by:

- a. all documentation called for in the Contract Documents, including but not limited to evidence of insurance required by
 - b. consent of the surety, if any to final payment; and
 - c. complete and legally effective releases or waivers (satisfactory to the City) of all Liens arising out of or filed in connection with the Work (iv) a list of all unsettled claims against the City that the Contractor has filed in accordance with Article 9.
2. In lieu of the releases or waivers of Liens specified in this paragraph and as approved by the City, the Contractor may furnish receipts or releases in full; an affidavit from the Contractor that; (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the City or City's property might in any way be responsible, have been paid or otherwise satisfied. If any subcontractor or supplier fails to furnish a release or receipt in full, the Contractor may furnish a Bond or other collateral satisfactory to the City to indemnify the City against any Lien. If any lien remains unsatisfied after all payments have been made, the Contractor shall refund to the City all money that the City may be compelled to pay in discharging such lien(s).
 3. Notwithstanding any other provision of these Contract Documents to the contrary, the City and Project Officer are under no duty or obligation whatsoever to any subcontractor, laborer or other party to ensure that payments due and owed by the Contractor to any of them are or will be made. Such parties shall rely only on the Contractor's surety bonds for remedy of nonpayment by the Contractor.
 4. The Contractor's application for final payment shall be accompanied by the executed Request for Final Payment and Release of City Liability Form included in this solicitation.

Q. Review of Final Application and Acceptance

If, on the basis of the Project Officer's observation of the Work during the progress of the Work and final inspection, and the Project Officer's review of the final Application for the Payment and accompanying documentation as required by the Contract Documents, the Project Officer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, the Project Officer will, within ten (10) days after receipt of the final Application for Payment, indicate in writing the Project Officer's recommendation of payment and present the Application to the City for payment. Thereupon Project Officer will give written notice to the City and the Contractor that the Work is acceptable subject to the provisions of paragraph S (Waiver of Claims) below, Otherwise, Project Officer will return the Application to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case the Contractor shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to the City of the Application and accompanying documentation, and with Project Officer's recommendation and notice of acceptability, the amount approved by the Project Officer, will become due and will be paid by the City to the Contractor.

R. Final Completion Delayed

If, through no fault of the Contractor, final completion of the Work is significantly delayed and if the Project Officer so confirms, the City shall, upon receipt of the Contractor's final Application for Payment and recommendation of the Project Officer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by the City for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required by the Contract, the written consent of the surety to the payment of the balance due to that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Project Officer with the Application for such payment. Such payment will be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

S. Waiver of Claims

The making and acceptance of final payment will constitute:

- a. a waiver of all Claims by City against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph H (Final Inspection) above, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
- b. a waiver of all Claims by the Contractor against the City other than those previously made in accordance with the requirements herein and expressly acknowledged by the City in writing as still unsettled.

ARTICLE 9 - DISPUTES AND APPEALS PROCEDURES

A. Disputes

All disputes arising under this Contract or its interpretation, whether involving law or fact or both, for extra work, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision prior to beginning the work on which the claim is based. Such claims must set forth in detail the amount of the claim, and shall state the facts surrounding it in sufficient detail to identify it together with its character and scope.

In any case where the Contractor deems extra compensation is due him for work or materials clearly not covered in the Contract, or not ordered by the Project Officer as additional work not specifically included in the Contract Documents, the Contractor shall notify the Project Officer in writing of the Contractor's intention to make claim for such extra compensation before the Contractor begins the work on which the Contractor bases the claim. If such notification is not given, or the Project Officer is not afforded proper facilities by the Contractor for keeping strict account of actual cost, then the Contractor hereby agrees to waive the claim for such extra compensation.

Contractual disputes shall be processed in accordance with the procedures outlined in the Agreement.

The Contractor shall not cause a delay in the work pending a decision of the Project Officer, City Manager, City Council, or court, except by prior written approval of the Project Officer.

B. Decisions on Requirements Of The Contract Documents, Acceptability Of Work And Disputes

The Project Officer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work and Claims seeking changes in the Contract Price or Contract Times will be referred initially to the Project Officer in writing in accordance and within the provisions of Article 9, with a request for a formal decision.

The Project Officer will, with reasonable promptness, render a written decision on the issue referred after consultation with the City. If the City or the Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Times or both, a Claim is made under Article 9. The date of the Project Officer's decision denying the request for additional compensation or change in the Contract value or change in the Contract time shall be the date of the event giving rise to the issues referenced for the purposes of Article 9.

The Project Officer's written decision on the issue referred will be final and binding on the City and Contractor, subject to the provisions of Article 9. The rendering of a decision by Project Officer pursuant to this Article with respect to any such Claim, dispute or other matter (except any which have been waived by the making or acceptance or final payment as provided in Article 8) will be a condition precedent to any exercise by the City or the Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

C. Claims, Counterclaims And Disputes

All claims, counterclaims, disputes, and other matters in question arising under, or relating to, the Contract Documents or the breach thereof shall be processed in accordance with the provisions of this Article, and the City of Fairfax Ordinances and Virginia Public Procurement Act,

as amended. Exhaustion of administrative remedies is a condition precedent to commencing any action in a court of law. All claims are subject to audit by the City or its representative(s).

A claim means a written demand or assertion by the Contractor seeking an adjustment in Contract Price and payment of monies so due, and extending or shortening in Contract Times, the adjustment or interpretation of Contract Terms or requirements, or other relief arising under or relating to the Contract. A written demand or assertion by the Contractor seeking the payment of money or an extension of time is not a claim under this Article until certified as required under Article 8.

D. When Notice and Claim Submittal Become Due

For any claim under this Article to be valid, it will be based upon a written notice of claim delivered by the Contractor to the City promptly, but in no event later than fifteen (15) days, after the occurrence of the event giving rise to such claim, as referenced in paragraph J (Delays for Projects Requiring Critical Path Method Scheduling) under Article 11, and stating the general nature of the claim. The claim submittal with all supporting cost data, CPM schedule analysis and Contractor's affidavit shall be delivered within thirty (30) days after delivery of the notice of claim (unless the City allows an additional period of time to ascertain more accurate data in support of the claim). The responsibility to substantiate claims shall rest with the party making the Claim. Failure to provide a notice of claim in accordance with this Article, or failure to provide a complete claim submittal, including an update to the current approved progress schedule for the event or events giving rise to the claim, within the time required in accordance with this Article, shall bar the claim.

E. Requirements For Contractor Claims

For all Contractor claims seeking an increase in Contract Price or Contract Times, the Contractor shall submit with the claim an affidavit certifying that:

1. The claim is made in good faith, and the amount claimed accurately reflects the adjustments in Contract Price or Contract Time for which the Contractor believes the City is liable, and covers all direct, supplemental, indirect consequential, serial and cumulative costs and delays to which the Contractor is entitled as a result of the occurrence of the claimed event;
2. Supporting Cost and Pricing Data are current, accurate, complete and represent the best of the of the Contractor's knowledge and belief; and
3. If the Contractor is an individual, the affidavit shall be executed by that individual; if the Contractor is not an individual, the affidavit shall be executed by a senior company official in charge at the Contractor's plant or location involved, or a responsible officer or general partner of the Contractor.
4. All claims for time shall be supported by an analysis of the Progress Schedule detailing the impact of the claimed work.
5. No claim from the Contractor's subcontractor may be submitted without a complete written claim analysis including an independent cost proposal.

F. Determination on a Claim

No appeal or demand for resolution of any claim, dispute, or other matter will be made until after the earlier of (a) the date on which Project Officer has rendered a decision or (b) thirty (30) days after the Contractor has presented its claim submittal to the Project Officer (if a written decision has not been rendered by Project Officer before that date). No appeal will be made later than fifteen days after the date on which Project Officer has rendered a written decision, and the failure to appeal within said fifteen days' period shall result in Project Officer's decision

being final and binding upon Contractor. The procedure for appeals and resolution of disputes by Contractor is set forth in the Contract Documents.

All appeals and requests for resolution of disputes shall be submitted to the City of Fairfax, City Manager for a final decision. A final decision will be rendered, in writing, within sixty (60) days of submittal of the dispute to the City Manager. The decision of the City Manager will be final and conclusive unless the Contractor appeals to the City Council of City of Fairfax within six (6) months of the date of the decision by the City Manager. The Contractor may institute legal proceedings, as provided in Virginia Public Procurement Act, only after receiving the City Council's decision. Decisions rendered by the City Council will be final.

All references to arbitration contained within this Contract are expressly deleted.

G. Venue

The Contractor, and any subcontractor, supplier and any other person or organization performing any part of Work, agree that each of them will waive jurisdiction and venue and shall submit to the jurisdiction of the courts of the Commonwealth of Virginia.

-END OF SECTION-

PART FIVE – SAMPLE AGREEMENT

FOLLOWING THIS PAGE IS THE AGREEMENT THAT WILL BE ENTERED INTO BETWEEN THE CITY AND THE CONTRACTOR. THE AGREEMENT IS PART OF THIS SOLICITATION. THIS AGREEMENT IS SUBJECT TO REVIEW BY THE CITY ATTORNEY PRIOR TO BEING SUBMITTED FOR CONTRACTOR'S SIGNATURE.

**CITY OF FAIRFAX, VIRGINIA
CITY HALL
10455 ARMSTRONG STREET
FAIRFAX, VIRGINIA 22030**

AGREEMENT NO. 17038

THIS AGREEMENT is made, on the date of execution by the City of Fairfax, Virginia between _____ ("Contractor") a _____ [Corporation, General Partnership, Limited Liability Company, etc.] authorized to do business in the Commonwealth of Virginia, and the City of Fairfax, Virginia, a Virginia municipal corporation and owner, hereinafter called ("the City,"). The City and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of:

- Agreement No.17038, and all modifications properly incorporated into the Agreement
- Exhibit A – City of Fairfax Invitation for Bid No. 17038 ;
- Exhibit B - Bid of the Contractor, Bid Form pages.

Where the terms and conditions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Document, however, Exhibit A shall prevail over Exhibit B.

The Contract Documents set forth the entire Agreement between the City and the Contractor. The City and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' Agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein as the "Contract" or "Agreement."

2. PROJECT OFFICER

The performance of the Contractor is subject to the general control, review and approval of the City Project Officer, who shall be appointed by the Director of Public Works Department or designee. The Contractor shall not comply with requests and/or orders issued by other than the Project Officer of designee. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work under this Agreement. Where the term "Engineer" is used in the Contract Documents, it shall be interpreted to mean "Project Officer".

3. SCOPE OF WORK

The Contractor will furnish all labor, materials, and equipment for the provision of and installation of ADA ramp and associated work at Blenheim Historical House (the "Project") and all other work shown, described and required in the Contract Documents (hereinafter "the Work"). The Work shall be performed according to the standards established by the Contract Documents read together as a single specification. It shall be the obligation of the Contractor to obtain clarification from the Project Officer concerning any questions about or conflicts in the specifications, drawings and construction notes in a timely way so as not to delay the progress of the Work. The Contract Documents set forth the minimum Work estimated by the City and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at solely the Contractor's cost, to provide sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of its Work.

4. RESPONSIBILITY

In all operations connected with and embraced in this contract, the Contractor shall be held responsible for any failure to respect, adhere to, and comply with such ordinances and laws pertaining to the work, or those engaged therein, or affecting materials or transportation or disposition of same, and the Contractor hereby assumes all liability for and agrees to indemnify the City against all such loss, costs, damages and liabilities for any or by reason or any liens, claims or demands, either mechanics and others, and from any damages, costs, actions, or causes of action, and judgments arising from injuries sustained or otherwise occurring through the neglect or carelessness of said Contractor, its agents, employees or workmen.

Any person employed on the work who shall be deemed to be incompetent, not productive and contributing to the Work, or shall be guilty of any disorderly conduct, or shall commit any trespass of any public or private property in the vicinity of the work, shall at once be removed from the work by the Contractor, when so requested by the City.

5. TIME FOR COMPLETION

Time is of essence under this Agreement, as such Work under this Agreement shall achieve Final Completion no later than seventy (70) consecutive calendar days following the commencement date give in the written Notice to Proceed (NTP) provided by the City, subject to any modifications made as provided for in the Contract Documents.

The Contractor agrees that the time for completion of the Work as described in the Contract Documents shall govern unless specifically amended in writing by the City, and that no claims for early completion are allowed to be presented by the Contractor to the City unless specifically provided for in the Contract Documents.

6. LIQUIDATED DAMAGES

The City specifies that time is of essence under this Agreement. Time being of the essence, it is essential to the City that Contract work to be completed within the Time for Completion. The City and the Contractor agree that damages for failure to achieve Substantial Completion of the Work by the date specified under Time for Completion are not susceptible to exact determination but that two hundred dollars (\$200.00) per calendar day is in proportion to the actual loss that the City would suffer from such delay.

If the Contractor fails to achieve Completion by the Date of Completion established herein, as adjusted under the terms of this Contract, then the Contractor shall pay to the City liquidated damages, and not a penalty, of until Completion is achieved. The liquidated damages shall constitute the City's exclusive damage remedy for the Contractor's failure to complete the Work on or before the Date of Completion, but such liquidated damages shall in no way limit the City's entitlement to damages for any injury, damage or loss other than for delay for which the Contractor may be responsible under the terms of this Agreement or under applicable law. Sums due and owing to the Contractor by the City at the time of Completion shall be reduced by any setoffs to which the City is entitled as liquidated damages. The Contractor shall pay the City any liquidated damages to which the City is entitled, but which are not recoverable by setoff, within thirty (30) calendar days of Completion of the Project.

7. CONTRACT AMOUNT

The City will pay the Contractor according to the Lump Sum price shown in the bid, Exhibit E, but not more than \$_____ in accordance with the Progress Payments paragraph for the Contractor's completion of the Work described and required in the Contract Documents for the Contract Term, subject to the terms and conditions of the Agreement and provided the Work is performed to the satisfaction of and is accepted by the Project Officer. The Contractor agrees that it shall complete the Work for the total Contract Amount specified in this section unless such amount is modified as provided in this Agreement. The Contract Amount includes all of Contractor's costs and fees (profit)

and is inclusive of all anticipated or known site conditions, anticipated or known materials, labor, and equipment costs, or any other costs which should reasonably have been expected by the Contract Documents.

8. PROGRESS PAYMENTS, PROPORTIONAL AND UNIT PRICE PAYMENTS

The City will make monthly progress or partial payments to the Contractor upon written application by the Contractor, on the basis of an estimate, provided by the Contractor and approved by the Project Officer, of all work performed during the preceding calendar month to the satisfaction of the Project Officer. However, in making any progress payment, five percent (5%) of the amount of the estimate upon which the progress payment is based will be retained by the City until Final Completion and acceptance of all Work covered by the Agreement.

All material and work covered by partial payments made by the City will become the property solely of the City at the time the partial payment is made, but this provision will not be construed as relieving the Contractor from the sole responsibility, care and custody for all materials and work upon which payments have been made, or the restoration of any damaged work, nor shall this provision be construed as a waiver of the City's right to require the fulfillment of all of the terms of the Agreement.

When calculating payment for materials on-site, the City shall not pay for materials which are not scheduled for incorporation into the Work within sixty (60) days from the date of application for payment.

9. RELEASE AND REQUEST FOR FINAL PAYMENT

Upon completion of the Project and before Final Acceptance, the Contractor will submit to the Project Officer a signed copy of the City of Fairfax Release and Request for Final Payment form per the General Conditions.

10. PAYMENT TERMS

Payments (net of retainage, if applicable) shall be made after the satisfactory performance of the work required and called for under this Contract, in accordance with the provisions thereof. Unless otherwise stated, the City will pay the Contractor within forty-five (45) days of the date of receipt of a correct, monthly invoice, as determined and approved by the Project Officer, listing the services performed and/or the goods delivered and accepted by the City. The City's Purchase Order number shall appear on all invoices. The City reserves the right to withhold any or all payments or portions thereof if the Contractor fails to perform in accordance with the provisions of the Contract or any modifications thereto.

Invoices for payment shall be emailed to the following email addresses:

AccountsPayable@fairfaxva.gov and chris.martin@fairfaxva.gov

Failure to submit invoices to the Accounts Payable email address may result in delays in payment.

11. PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by the City for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the City and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) calendar days following receipt by the Contractor of payment from the City for work performed by the subcontractor under this

Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements as those contained herein with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to the above provisions may not be construed to be an obligation of the City. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

12. CITY PURCHASE ORDER REQUIREMENT

City purchases are authorized only if a City Purchase Order is issued in advance of the transaction, indicating that the ordering department has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering department. The City will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the City Buyer. If the Contractor provides services without a signed City Purchase Order, it does so at its own risk and expense.

13. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by federal or Virginia law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary or related to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that the Contractor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment, and mandates their full participation in both publicly and privately-provided services and activities.
- E. The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000.00, so that these provisions will apply to each subcontractor or vendor.

14. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with § 2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

15. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants

for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of marijuana or any other controlled substance 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 \$10,000.00 relating to this Contract, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by the City, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

16. LIENS

It is further understood and agreed that in all cases of non-payment by the Contractor of any sums of money due from it to its laborers or other workmen for work performed under this contract, or if at any time there should be evidence of a lien or claim which is chargeable to the Contractor and for which, if established, the City might become liable, the City is hereby authorized and empowered to retain out of any payment then due, or thereafter, to become due, an amount sufficient to completely indemnify the City against any such lien or claim. Before payments are made under this contract, the Contractor shall furnish the City satisfactory evidence that there are no mechanics' liens or other encumbrances on the premises by reason of materials furnished or work or labor done or performed, or ordered by the Contractor. The Contractor shall become and hereby agrees to become responsible to the City for the payment of any sums in liquidation by reason of any liens that may be placed upon the premises by reason of the work or materials furnished or ordered by the Contractor. In the event that the City is put to any expense, or shall suffer as cost by reason of the foreclosure or otherwise on account of any lien which may be placed upon the property of the City in connection with the work contemplated by this contract, the Contractor agrees to reimburse the City for all such expenditures made by it including legal fees and expenses. The Contractor does hereby expressly waive and release any and all liens or rights or claim of lien on the premises on account of labor or material, or both, furnished by the Contractor directly or through subcontractors or material men to or on account of the City for said premises. The City may from time to time, out of funds due or to become due to Contractor under this contract or otherwise, retain such reasonable sums as it may deem necessary for its protection in its behalf and the Contractor shall pay any deficiency arising therefrom upon demand.

17. WARRANTY

All goods and materials provided to the City shall be fully guaranteed by the Contractor against factory defects. Any defects which may occur as the result of either faulty material or workmanship by the manufacturer within the period of the manufacturer's standard warranty shall be corrected by the Contractor at no expense to the City. The Contractor shall provide evidence of all manufacturers' warranties to the Project Officer at the time of delivery. All goods and materials are also guaranteed by the Contractor against defects resulting from the use of inferior or faulty materials or workmanship for one (1) year from the date of final acceptance by the City in addition to and irrespective of any manufacturer's or supplier's warranty. No date other than the date of final acceptance shall govern the effective date of the Guaranty, unless that date is agreed upon by the City and the Contractor in advance and in a signed writing.

18. FAILURE TO DELIVER

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the City, after due oral or written notice, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs; provided, that if public necessity requires the use of materials or supplies not conforming to the specifications, they may be accepted and payment therefore shall be made at a reduction in price to be determined solely by the City. This remedy shall be in addition to any other remedies, which the

City may have. The City shall be entitled to offset such costs against any sums owed by the City to the Contractor.

19. UNSATISFACTORY WORK

If any of the work done, or material, goods, or equipment provided, by the Contractor is unsatisfactory to the City, the Contractor shall, on being notified by the City, immediately remove at the Contractor's expense such unsatisfactory work, material, goods, or equipment and replace the same with work, material, goods, or equipment satisfactory to the City. In the event the Contractor fails within fifteen (15) days after receipt of written notice to remove improper or unsuitable work, material, goods, or equipment and replace it with suitable and satisfactory work, material, goods, or equipment, the City shall have the right, but not the obligation, to remove or replace the rejected work, material, goods, or equipment at the expense of the Contractor. This paragraph applies during the Contract term and during any warranty or guarantee period. At its discretion, the City shall be entitled to offset such expense against any sums owed by the City to the Contractor under this Contract. If the Project Officer and the City deem it expedient not to require correction or replacement of the work which has not been done in accordance with the Contract, an appropriate adjustment to the Contract Amount may be made therefore.

20. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

The City shall have the right to terminate this Contract prior to the Time for Completion if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by the City in its discretion.

If the City determines that the Contractor has failed to perform satisfactorily, then the City will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the City prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the City Project Officer within fifteen (15) days after the expiration of the Cure Period. The City may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If the City terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from the City to the Contractor (unless the City in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to the City for all costs incurred by the City after the effective date of termination, including costs required to be expended by the City to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to the City upon demand by the City. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to the City, and the City shall be entitled to recover, all damages to which the City is entitled by this Contract or by law, including and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by the City to the Contractor under the Contract and all attorney fees and costs incurred by the City to enforce any provision of this Contract.

Except as otherwise directed by the City in the notice, the Contractor shall stop work on the date of

receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the contractor

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

21. TERMINATION FOR THE CONVENIENCE OF THE CITY

The performance of Work under this Contract may be terminated by the City Purchasing Agent in whole or in part whenever the Purchasing Agent shall determine that such termination is in the City's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the City prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the City; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

22. INDEMNIFICATION

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify the City, and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards, and commissions (collectively the "City" for purposes of this section) from and against any and all claims made by third parties or by the City for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by the City, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the City for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the City and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

23. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that no intellectual property rights (including, but not limited to, copyright, patent, mask work and trademark) of third parties are infringed or in any manner involved in or related to the services provided hereunder.

The Contractor further covenants for itself, its employees, and subcontractors to save, defend, hold harmless, and indemnify the City, and all of its officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or unpatented invention, process, or article manufactured or used in the performance of this Contract, including its use by the City. If the Contractor, or any of its employees or subcontractors, uses any design, device, or materials covered

by letters patent or copyright, it is mutually agreed and understood, without exception, that the Contract Amount includes all royalties, licensing fees, and any other costs arising from the use of such design, device, work, or materials in any way involved with the work hereunder. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after Notice by the City, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse the City for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by the City and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

24. COPYRIGHT

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the City all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the City may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of this Contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

25. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or to disclose the City's data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of the City's request for services under this Contract, are the exclusive property of the City ("Record" or "Records"), and all such Records shall be provided to and/or returned to City upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of the City. Additionally, the Contractor agrees that the Records are confidential records and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At the City's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the City's request, shall destroy all computer records created as a result of the City's request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

26. CONFIDENTIAL INFORMATION

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all City information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

27. ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference all Commonwealth of Virginia or federal laws related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the Virginia State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

28. CITY EMPLOYEES

No employee of the City shall be admitted to any share in any part of this Contract or to any benefit that may arise there from which is not available to the general public.

29. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the Contractor and outside the scope of the Contractor's then-current, by industry standards, disaster plan that make performance impossible or illegal, unless otherwise specified in the Contract.

The City shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond the control of the City that make performance impossible or illegal, unless otherwise specified in the Contract.

30. AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia §§ 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by a Contractor in violation of this requirement is voidable, without cost or expense, at the sole option of the City.

31. RELATION TO THE CITY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. The City will not withhold from payments to the

Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor or its employees, servants or agents. Furthermore, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees.

32. ANTITRUST

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

33. REPORT STANDARDS

Reports or written material prepared by the Contractor in response to the requirements of this Contract or a request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

34. AUDIT

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. The City or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Initial Contract Term or any Subsequent Contract Term. If the Contractor wishes to destroy or dispose of records (including confidential records to which the City does not have ready access) within five (5) years after final payment, the Contractor shall notify the City at least thirty (30) days prior to such disposal, and if the City objects, shall not dispose of the records.

35. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of the City.

36. INSOLVENCY OF CONTRACTOR

It is recognized that if the Contractor is adjudged a bankrupt, makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of creditors on account of the Contractor's insolvency, such circumstance could impair or frustrate the Contractor's performance of this Contract. Accordingly, the parties to this Contract agree that upon the occurrence of any such event, the City shall be entitled to request of the Contractor or its successor in interest adequate assurances of future performance in accordance with the terms and conditions of the Contract Documents and the Contractor shall have seven (7) business days to provide such assurances. The Contractor's failure to comply with such request shall entitle the City to terminate this Contract immediately and to the accompanying rights thereunder.

37. AMENDMENTS

Unless otherwise specified herein, this Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and the City.

38. CITY OF FAIRFAX ORDINANCE AND VIRGINIA PUBLIC PROCUREMENT ACT

Notwithstanding any provision to the contrary herein, no provision of the City of Fairfax and Virginia Public Procurement Act or any applicable City policy is waived in whole or in part.

39. DISPUTE RESOLUTION

- A. The resolution of disputes hereunder shall be governed by Sections 2-364(g) and (h) of the Code of the City of Fairfax, Virginia, and Sections 2.2-4363 and 2.2-4364 of the Code of Virginia (1950). Any dispute between Contractor and the City concerning a question of fact as a result of this Agreement which is not disposed of by mutual agreement shall be decided by the City's authorized representative, who shall reduce his/her decision to writing and mail or otherwise forward a copy thereof to Contractor within thirty (30) days. The decision of the City's authorized representative shall be final and conclusive unless Contractor appeals within six (6) months of the date of the final written decision by instituting appropriate legal action. Contractor may not institute legal action prior to receipt of the City's decision on the claim, unless the City fails to render such decision within the time specified.
- B. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of Contractor's intention to file such claim shall have been given within five (5) days of the time of the occurrence or within five (5) days of the beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of the claims shall not delay payment of amounts agreed due in the final payment.
- C. Contractor shall not institute any legal action until the requirements set forth above have been met

40. APPLICABLE LAW, FORUM, VENUE, AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia, and the jurisdiction, forum, and venue for any litigation with respect hereto shall be in the Circuit Court for Fairfax City, Virginia, and in no other court. In performing its work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

41. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and that any references to arbitration are expressly deleted from the Contract.

42. NONEXCLUSIVITY OF REMEDIES

All remedies available to the City under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to the City at law or in equity.

43. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.,

44. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

45. NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by the City pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the City. The parties intend for this provision to be read as broadly as possible.

46. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO THE CITY; CONFIDENTIALITY AND RETURN OF RECORDS; AUDIT; COPYRIGHT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; AND CONFIDENTIAL INFORMATION.

47. HEADINGS

The section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

48. AMBIGUITIES

Each party and its counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

49. NOTICES

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

TO THE CONTRACTOR:

REFER TO BID FORM OF THE CONTRACTOR

TO THE CITY:

Chris Martin, City Engineer
Historic Resources
3610 Old Lee Highway
Fairfax, Virginia 22030;

AND

David Hodgkins, Purchasing Agent
Finance Department
14055 Armstrong Street, Suite 316
Fairfax, Virginia 2230

50. NON-DISCRIMINATION NOTICE

The City does not discriminate against faith-based organizations.

51. INSURANCE, PAYMENT AND PERFORMANCE BONDS

The Contractor shall maintain the required insurance coverage and payment and performance bonds through the completion of the Contract, including all warranty and guarantee periods.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first aforesaid.

CONSENTED and AGREED TO BY:

CITY OF FAIRFAX, VIRGINIA

By: _____
Robert L. Sisson
City Manager

Date: _____

CONTRACTOR'S NAME.

By: _____
Signature of Authorized
Agent or Principal

Name of Authorized
Agent or Principal

Date: _____

APPROVED AS TO FORM

By: _____
CITY ATTORNEY

-END OF SECTION-