

ATTACHMENT B
GENERAL TERMS AND CONDITIONS
Goods and Services

1. STANDARD OF CARE

In the performance or furnishing of Goods and Services hereunder, the Contractor and all its agents shall exercise the degree of skill and care normally accepted as professional practices and procedures by members of the same profession or business currently practicing under similar conditions in the same locality (“Customary Standard of Care”).

2. INSURANCE, PAYMENT AND PERFORMANCE BONDS

The Contractor shall maintain the required insurance coverage and Payment and Performance Bonds through Final Completion of the Contract. Payment and Performance Bonds shall remain in effect for a period of one year following the date of Final Completion including all warranty and guarantee periods.

3. INSURANCE

Contractor shall secure and maintain and provide to the City Risk Manager with a copy to the City Purchasing Agent evidence indicating that the Contractor has in force the coverage and endorsements required below. The Contractor agrees to maintain such insurance until the Final Completion of the Contract

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-” and a Financial Size Category of 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 resulting Contract. The Contractor is responsible for determining whether the minimum coverage below is adequate to protect its interest.

The Contractor shall also ensure that its subcontractors secure and maintain all insurance required by the Contract, including without limitation:

- 1) **Workers Compensation** - Maintain coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits. As an alternative, it is acceptable for the contractor to be insured by a group self-insurance association that is licensed by the Virginia Bureau of Insurance. The contractor will also carry employer’s liability insurance with a limit of at least \$100,000 bodily injury by accident/\$500,000 bodily injury by disease policy limit/\$100,000 bodily injury by disease each employee. The City will not accept coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- 2) **Commercial General Liability** - Maintain a general liability policy with \$1,000,000 combined single limits with \$2,000,000 general aggregate covering all Work and including personal injury, explosion, underground collapse and underground hazards. Coverage is to be on an occurrence basis and shall list the City of Fairfax, Virginia as an additional insured by the insurance company. A notation on the certificate of insurance is not sufficient.

- 3) **Automobile Liability** - Maintain automobile liability insurance with limits of at least \$1,000,000 and with a symbol "1".
- 4) **Builders Risk** - When providing new or replacement Work, the contractor shall maintain builders risk coverage on a replacement cost basis for the duration of the contract. The limit will be the full replacement cost of the building and/or structures being built. The City of Fairfax, Virginia shall be listed as insured to protect property owned at the construction site.
- 5) **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, Automobile, and Professional Liability.
- 6) **Cancellation** - If there is a material change or reduction in coverage, nonrenewal or cancellation of any insurance coverage required by this Contract, the Contractor shall notify the City immediately. 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 Risk Manager prior to the execution of this Contract or any Contract extension thereafter.
- 7) **Claims Made** - 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.
- 8) **Contract Identification** – All documentation and copies of endorsements required hereunder shall state this Contract's number and title.
- 9) **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

4. **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 for Work performed by subcontractors under this Contract:

- (i) 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
- (ii) 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 Contractor's receipt of payment 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 require 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.

5. CITY PURCHASE ORDER REQUIREMENT

A City Purchase Order is required in advance of the Work, indicating that the ordering department has sufficient funds available to pay for the purchase.

6. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, 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 provisions.

The Contractor shall include the nondiscrimination provisions in every subcontract or purchase order of over ten thousand dollars (\$10,000 such that these provisions will apply to each subcontractor or vendor.

7. 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.

8. LIENS

It is further understood and agreed that in all cases of non-payment by the Contractor of any sums of money due to its laborers or other workers 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 an amount sufficient to completely indemnify the City against any such lien or claim.

Before final payment is made the Contractor shall furnish to 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 performed or ordered by the Contractor.

9. 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 all manufacturers' warranties to the City at the time of delivery.

10. 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 of its employees and/or subcontractors, in performance or nonperformance of the Work called for by the Contract Documents.

11. 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 is 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 upon 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.

12. 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 City or 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.

13. 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.

14. 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.

15. 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.

16. AMENDMENTS

This Contract shall not be amended except by written amendment executed by persons duly authorized to bind both parties.

17. CITY OF FAIRFAX ORDINANCE AND VIRGINIA PUBLIC PROCUREMENT ACT

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

18. DISPUTE RESOLUTION

- A. The resolution of disputes hereunder shall be governed by Section 2.2-4363 and 2.2-4364 of the Code of Virginia and as set forth herein. Any dispute between the Contractor and the City concerning a question of fact as a result of this Contract 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 the Contractor within thirty (30) days. The decision of the City's authorized representative shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting appropriate legal action.
- 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 the 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 the City from requiring submission of an invoice for final payment within a certain time after the completion and acceptance of the Work or delivery and acceptance of the goods. Pendency of the claims shall not delay payment of amounts agreed due in the final payment.

The 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.

19. 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 County, 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. In the event of any conflict between the provision of this contract and applicable Federal, State and Local Laws, Ordinances and Regulations, the language of any Federal Laws, Ordinances and Regulations shall govern.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or 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.

26. 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.

27. 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.

28. 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 defined in Article 10 of the Agreement.

END OF SECTION