

**COPY #**

**CONTRACT #B-23-03**



**Town Of Herndon, Virginia  
Department of Public Works  
777 Lynn Street  
Herndon, Virginia 20170**

**Phone Number: (703) 435-6853  
Email: [publicworks@herndon-va.gov](mailto:publicworks@herndon-va.gov)**

## **INVITATION FOR BID**

### **HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN**

**BID DUE: MONDAY, APRIL 17, 2023 AT 2:00 P.M.**

**BID OPENING: MONDAY, APRIL 17, 2023 AT 2:05 P.M.**

**This public body does not discriminate against faith-based organizations or against any bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by laws relating to discrimination in employment.**

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DEPARTMENT OF PUBLIC WORKS  
TOWN OF HERNDON, VIRGINIA

ADVERTISEMENT FOR BID  
HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN  
CONTRACT NO. B-23-03

Sealed bids are hereby solicited for construction of HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN located in Herndon, Virginia.

The work shall include the following:

Reconstruction of seventeen (17) tee complexes (two (2) complexes at a time to facilitate play during construction window), construction of three (3) fairway tie-ins, installation of new drainage throughout to improve turf conditions, irrigation improvements for each tee complex, removal of trees on several tees to improve line of play, and other incidentals associated with this work.

This is a lump sum contract. Contract length is 90 calendar days to date of Substantial Completion.

Bids are to be submitted to the Department of Public Works at the Herndon Municipal Center, 777 Lynn Street, 2<sup>nd</sup> Floor, Herndon, Virginia until 2:00 p.m. prevailing local time, Monday, April 17, 2023. Bids received after that time, will not be accepted. Bids will be opened publicly and read aloud at 2:05 p.m., Monday, April 17, 2023, in the Herndon Municipal Center, 2<sup>nd</sup> Floor Conference Room located at 777 Lynn Street, Herndon, Virginia 20170

A non-mandatory Pre-Bid Conference will be held on Monday, April 03, 2023, at 1:00 p.m., in the Herndon Centennial Golf Course located at 909 Ferndale Avenue, Herndon, Virginia 20170. All attendees must pre-register through email at [publicworks@herndon-va.gov](mailto:publicworks@herndon-va.gov) by Friday, March 31, 2023, 5:00 p.m. for information and instructions on joining and participating in this meeting.

Bidding Documents may be obtained commencing Tuesday, March 21, 2022 from the Town of Herndon Department of Public Works through its Procurement Webpage at <http://herndon-va.gov/departments/finance/purchasing>, and on the Commonwealth of Virginia Department of General Services' central electronic procurement website (eVA) at <https://eva.virginia.gov>.

ADVERTISEMENT FOR BID  
HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN  
CONTRACT NO. B-23-03


All questions concerning the project shall be submitted by email to the attention of the Project Engineer of Public Works at [publicworks@herndon-va.gov](mailto:publicworks@herndon-va.gov). This office is the only point where information will be disseminated. All questions must be submitted no later than 5:00 p.m. on Friday, April 07, 2023.

The Town will post addendums, the results of this bid opening and award information on its Procurement Webpage at <http://herndon-va.gov/departments/finance/purchasing>, and on the Commonwealth of Virginia Department of General Services' central electronic procurement website (eVA) at <https://eva.virginia.gov> prior to the official bid award.

Bid Security must accompany each proposal in accordance with Instruction to Bidders. Bids shall be binding for sixty (60) days.

The Town of Herndon reserves the right to reject any and all bids, to waive informalities and irregularities in bidding, and to accept bids which are considered to be in the best interest of the town.

TOWN OF HERNDON

By:   
\_\_\_\_\_  
Scott Robinson, P.E.  
Director of Public Works

Dated: 3/21/2023

## SECTION A

### INSTRUCTION TO BIDDERS

#### A-1. SUBMISSION OF BIDS AND BID OPENING

- A. Bids will be received by the Department of Public Works at 777 Lynn Street, Herndon, Virginia 20170 and will be opened and read at the times and places set forth in the Advertisement for Bid. Bidders, or their representatives, and other interested persons may be present at the opening of proposals.
- B. The envelopes containing the bids must be sealed and addressed to the Director, Department of Public Works, 777 Lynn Street, Herndon, Virginia 20170 and marked on the outside **“IFB B-23-03 Herndon Centennial Golf Course Tee Renovation Plan”, with name of the Bidder and his Virginia State Contractor’s Registration Number.** In the event the bid contains bulky subject material, firmly affix the mailing envelope provided to any other wrapper being used. The Town is not responsible for premature opening or late arrival of bids improperly addressed or identified. If a bid is mailed in an envelope, not as specified, the Bidder takes the risk that the Town may inadvertently open the envelope and the information compromised which may cause disqualification of the bid. The Town reserves the right to declare such a bid as non-responsive. The Bidder may hand deliver sealed bids to the designated location.
- C. The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids. Bids received after the published time and date of acceptance shall be date and time stamped, marked “late” and retained unopened in the procurement file. In addition, the Town will not accept hand-delivered bids that are presented after the published time and date of acceptance. The Town does not accept liability for late or non-receipt of bids.

#### A-2. BIDDING DOCUMENTS

- A. Bid Forms: For consideration for selection, Bidder must submit a complete response to this solicitation. A complete response will consist of the return of the following documents:
  - 1. One (1) original and one (1) copy with a completed Official Town of Herndon Bid Form signed by an authorized representative from the bidder’s firm; please see section A-17.
- B. Bidding Documents include the Advertisement for Bid, Instructions to Bidders, Form of Bid, the Bid Bond, and the proposed Contract Documents, including any Addenda issued prior to receipt of bids. All requirements and obligations of the Bidding Documents are hereby incorporated by reference into the Contract Documents and are binding on the Successful Bidder upon Award of the Contract.

- C. Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement for Bid in the number and for the price, if any, stated therein.
- D. Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor the A/E shall assume any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- E. The Owner, in making copies of the Bidding Documents available on the above terms, does so only for the purpose of obtaining Bids on the Work and does not confer a license or grant for any other use.

#### A-3 DEFINITIONS

##### A. THE BID:

A Bid is a complete and properly signed proposal to do the work or designated portion thereof for the sums stipulated therein, submitted in accordance with the Bidding Documents.

##### B. BASE BID:

The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which work may be added or from which work may be deleted for sums stated in Alternate Bids, if any.

##### C. ALTERNATES:

An Alternate Bid (or Alternates) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

#### A-4 QUALIFICATION OF BIDDER

- A. The Successful Bidder shall perform at least that percentage of the Work specified in the Owner-Contractor Agreement, with forces that are in the direct employment of the Contractor's organization. If requested by the Owner, prior to the signing of the contract, the successful Bidder shall submit a statement of work to be performed by his own forces.
- B. Prior to Contract award or within seven (7) days of the Owner's request to do so, the successful Bidder shall be prepared to demonstrate that his present organization, direct labor force and prior work experience is of adequate size and development to maintain responsible control of the project and to schedule, coordinate and perform the work in an expeditious manner and in accordance with the Contract Documents.

- C. Bidders, whether residents or nonresidents of Virginia, will be required to show evidence of a certificate of registration as required by Chapter 11 of Title 54.1 of the Code of Virginia before their bids will be considered. If a bid is \$120,000 or more, or if the Contractor's annual volume is \$750,000 or more, the Contractor must be licensed as a "Class A Contractor". If a bid is \$10,000 or more but less than \$120,000, the Contractor must be licensed as at least a "Class B Contractor". The Bidder shall place on the outside of the envelope containing the bid and shall place in the bid, at the place provided, whichever of the following notations is appropriate:

"Licensed Class A Virginia Contractor No. \_\_\_\_\_

"Licensed Class B Virginia Contractor No. \_\_\_\_\_

"Contract is less than \$1,000 therefore licensure is not required".

- D. The Owner will consider, in determining the qualifications of a Bidder, his record in the performance of any contracts for the construction work into which he may have entered with the Town or with such public bodies or corporations. The Owner expressly reserves the right to reject the bid of any Bidder if such record discloses that such Bidder, in the opinion of the Owner, has not properly performed such contracts or has habitually and without just cause neglected the payment of bills, or has otherwise disregarded his obligations to subcontractors, material men, suppliers or employees.
- E. The Owner may make such investigation as he deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as requested. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of such Bidder, fails to satisfy the Owner that such Bidder is a responsive and responsible Bidder in accordance with the criteria set forth herein. Conditional bids will not be accepted.

A-5 BIDDER'S REPRESENTATIONS

Each Bidder by submitting his Bid represents that:

- A. He has read and understands the Bidding Documents and his Bid is made in accordance therewith; and Bidder agrees to be bound by the terms and requirements set forth in the Bidding and Contract Documents;
- B. He has visited the site, has familiarized himself with the local conditions under which the Work is to be performed in accordance with Article A-8 and has correlated his observations with the requirements of the proposed Contract Documents;



- C. His Bid is based upon the materials, systems and equipment required by the Bidding Documents without exception; and
- D. He has the capability, in all respects, and the moral and business integrity, reliability, technical ability, financial resources, plant, management, superintendents, equipment and materials which will accurately ensure effective and efficient good faith performance in full compliance with the Contract Documents and with any and all schedules and Milestone and Completion dates required by the Owner. The Bidder acknowledges and represents that he has made allowances for normal inclement weather indigenous to the Project Site, in bid estimating, planning and scheduling of the Work. The Bidder further acknowledges that the Contract Documents are, in his opinion, appropriate and adequate for completing this project and for the construction of sound and suitable work. The Bidder hereby certifies that the work shall be completed, in place, in full accordance with the Contract Documents, within the time limits specified.

#### A-6 BID SECURITY

- A. Each bid must be accompanied by (1) a certified check of the Bidder made payable to the Town of Herndon or (2) a bidder's bond on the Bid Bond Form provided herein. The amount of the bid security will be 5% of the amount of the bid.
- B. Said bid security is given as a guarantee that the Bidder will enter into a contract if awarded the work and, in the case of refusal or failure to so enter into said contract, the security shall be declared forfeited to the Owner. Such security shall be returned to all but the three lowest Bidders within three days after the opening of bids and the remaining security will be returned within 48 hours after the Owner and the successful Bidder have executed the Contract. If no Contract has been awarded or the Bidder has not been notified of the acceptance of his bid, within sixty (60) days of the bid opening, the Bidder may withdraw his bid and request the return of his bid security. If, at the Owner's request, the Bidder agrees to extend and maintain his bid beyond the specified 60 days, his bid security will be held for the extended period.
- C. The Bidder's Certified Check or Bid Bond shall be accompanied by a written guarantee by a surety company licensed to do business in Virginia and acceptable to the Owner, that in the event a contract is awarded to the Bidder, said surety will furnish the required Performance, Labor and Material Payment and Guarantee Bonds, as required herein.

#### A-7. LIQUIDATED DAMAGES

The Successful Bidder, upon his failure or refusal to execute the Contract within fifteen (15) days after he has received notice of the acceptance of his bid, shall forfeit to the Owner the security deposited with his bid, as liquidated damages for such failure or refusal.

A-8 SITE CONDITIONS AND CONDITIONS OF WORK

- A. Each Bidder must acquaint himself thoroughly as to the character and nature of the work to be done. Each Bidder furthermore must make a careful examination of the site of the work and inform himself fully as to the difficulties to be encountered in the performance of the work, the facilities for delivering, storing and placing materials and equipment, and other conditions relating to construction and labor.
- B. Except where subsurface and/or latent conditions at the site are determined, in accordance with paragraph 12.9 of the General Conditions, to be materially different than those shown on the drawings or indicated in the contract documents, the Successful Bidder assumes all risk as to the nature and behavior of the soil or subsurface conditions which underlie the work or is adjacent thereto, or difficulties that may be due to any unfavorable conditions that may be encountered in the work, whether apparent on surface inspection or disclosed after construction begins.
- C. No plea of ignorance of conditions that exist prior to submission of bids, or may hereafter exist on the site of the work subsequent to the Notice to Proceed, or difficulties that may be encountered in the execution of the work, as a result of failure to make necessary investigations and examinations, will be accepted as an excuse for any failure or omission on the part of the successful Bidder to fulfill in every detail all the requirements of the Contract Documents and to complete the work for the consideration set forth therein, or as a basis for any claim whatsoever.
- D. In so far as possible or as required by the Contract Documents, the Successful Bidder, in carrying out his work, must employ such methods or means as will not cause interruption of or interference with the flow of vehicular or pedestrian traffic other than accounted for in the contract documents, or the work of the Owner, Vendor of the Owner, or any separate contractor.
- E. In general, the bid proposal will indicate the various utility items known to exist, will indicate items to be adjusted or improvements proposed by the respective owners and will designate any items that are to be adjusted by the Contractor. Information contained in the bid proposal regarding utility locations is advisory only and shall not be construed as being a representation of completeness or accuracy. The bidder shall contact the owners of the various utilities to determine the exact location of the utilities and the owner's schedule of work. Unless otherwise noted, all utility adjustments will be performed by the Utility or its representative. The Contractor shall cooperate with the owners of any utilities in their adjustment operations. Prior to preparing a bid, the bidder shall contact known utility owners to determine the nature, extent, and location of existing, adjusted, or proposed new utility facilities within the areas of construction. It is understood and agreed that the Contractor (1) has considered in his bid all of the permanent and temporary utility appurtenances in their present and relocated positions and, any proposed utility capital improvements, and (2) the Contractor has contacted the utility owner with regard to the Contractor's proposed schedule of work. The

Contractor shall include in his proposed schedule the amount of time to make utility adjustments, from time estimates furnished by the utility owners. Any costs associated with contacting, and coordinating with the utilities shall be reflected in the bid price for other items in the Contract. In the event the utility owners are non-responsive to the Contractor's efforts to contact them, the Contractor shall notify the Town prior to submitting a bid.

A-9 BIDDER'S QUESTIONS, ADDENDA AND INTERPRETATIONS

- A. Bidders and Sub-bidders shall promptly notify the Owner in writing of any ambiguity, inconsistency or error which they may discover upon examination of the Bidding and Contract Documents or of the site and local conditions. No interpretation of the meaning of the drawings, specifications or other contract documents will be made to any Bidder orally. The federal-aid or most conservative approach is to be taken to address any conflicts between state, local or federal rules.
- B. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the Bidding Documents which, if issued, will be posted on the Town of Herndon's Procurement Webpage at <http://herndon-va.gov/departments/finance/purchasing>, and on the Commonwealth of Virginia Department of General Services' central electronic procurement website (eVA) at <https://eva.virginia.gov> not later than three (3) calendar days prior to the date fixed for the opening of bids. The Owner reserves the right to postpone the bid opening at any time prior to opening bids. Failure of any Bidder to receive any such addendum or interpretation shall not relieve any Bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.
- C. If the Bidder (or any person bidding to Bidder and/or subsequently in contact with the Bidder, relating to the subject project) knows, or should have known, that an ambiguity, discrepancy, error, omission or conflicting statement exists in the Bidding or Contract Documents, said Bidder (or sub-bidder) has an obligation to seek a clarification thereof from the Owner prior to bid. The Owner will welcome such a clarification request, and, if deemed necessary by the Owner, the Owner will issue a written addendum clarifying the matter in question. Should the Bidder fail to seek such a clarification prior to bid, Bidder thereby assumes the risk of loss related to such ambiguity, discrepancy, error, omission or conflicting statement which the Bidder (and any person bidding to Bidder and/or subsequently in contract with Bidder, relating to the subject project) knew or should have known existed at the time of bid.
- D. Each Bidder shall ascertain prior to submitting his bid that he has received all Addenda issued, and he shall acknowledge receipt and inclusion in his proposal of all Addenda. Failure to indicate receipt of any Addenda on page B-2, Form of Bid, may be cause for rejection of bid.

A-10 SECURITY FOR FAITHFUL PERFORMANCE

The Successful Bidder shall furnish a Performance Bond and a Labor and Material Payment Bond, each in an amount equal to one hundred percent (100%) of the Contract Sum as security for the faithful performance of this Contract and as security for the payment of all persons performing labor and furnishing materials under this Contract. The Performance Bond and the Labor and Material Payment Bond shall be in separate instruments on the form provided by the Owner, in accordance with State law and shall be delivered to the Owner not later than the date of execution of the Contract. The surety shall be such surety company or companies that are acceptable to the Owner and that are authorized to transact business in the Commonwealth of Virginia.

A-11. TIME FOR COMPLETION AND LIQUIDATED DAMAGES FOR NON COMPLETION

The time for completion of this Contract and liquidated damages for non-completion within the stipulated time shall be as fixed in the Owner-Contractor Agreement.

A-12. LOCATION OF WORK

The site of the proposed work is on Town owned property, public streets, easements and/or other rights-of-way, as shown on the drawings.

A-13. LIABILITY INSURANCE AND WORKMEN'S COMPENSATION

The successful bidder will be required to carry public liability and workmen's compensation and other insurance in the amounts and under the terms stipulated under Article 11 of the General Conditions. Certificates of insurance and the insurance policies shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty days prior written notice has been given to the Owner. With all types of required insurance except worker's compensation, the Contractor must add the Town as an additional insured.

A. Workman's Compensation including Occupational Disease and Employer's Insurance.

1. Statutory Amounts and coverage as required by Virginia Workmen's Compensation Law.
2. Employers Liability at least \$1,000,000 each accident.

B. Public liability and Property Damage Insurance. The Contractor shall take out and maintain during the life of this Contract such Public Liability and Property Damage Insurance as shall protect him and any Subcontractor performing work under this

Contract from claims for damages for personal injury including accidental death, as well as from claims for personal property damage which may arise from operations under this Contract, whether such operations be by himself or by any Subcontractor or by anyone directly or indirectly employed by either of them. The Contractor shall procure insurance coverage for direct operations, sublet work, elevators, contractual liability and completed operations with limits not less than those stated below:

1. Bodily Injury Liability including Personal Injuries \$500,000 each person, \$1,000,000 each occurrence; and
2. Property Damage Liability \$500,000 each occurrence, \$1,000,000 aggregate;
3. Property Damages, including Broad Form Property Damage and Explosion, Collapse, Underground property damage coverages, and blasting, where necessary;
4. Completed Operations Liability: Continuous coverage in force for one year after completion of Work;
5. Comprehensive Automobile Liability Insurance, including coverage for owned, non-owned and hired vehicles with limits not less than those stated below:
  - a. Bodily Injury Liability \$500,000 each person, \$1,000,000 each occurrence,
  - b. Property Damage Liability \$500,000 each occurrence,
  - c. Excess/umbrella policy raising the above limits to \$2,000,000; and
6. Liability insurance may be arranged by Comprehensive General Liability and Comprehensive Automobile Liability policies for the full limits required; Comprehensive General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

**A-14. BIDDERS REFERRED TO LAWS**

- A. The attention of Bidders is called to the provisions of all municipal, Town, state and federal laws, regulations, ordinances and resolutions, including but not limited to, the Human Rights Ordinance; the Americans with Disabilities Act, Equal Opportunity, Small and Minority Business Enterprises; as well as laws, regulations, ordinances, resolutions and permits relating to obstructing streets, maintaining signals, storing and handling of explosives, or affecting the Bidder, or his employees or his work hereunder in his regulations, ordinances, permits or resolutions controlling or limiting Contractors while engaged in the prosecution of work under this contract.
- B. The provisions of this Contract shall be interpreted in accordance with the laws of the Commonwealth of Virginia and in accordance with the laws, ordinances, regulations, permits and resolutions of the Town of Herndon.

- C. Contractor certifies that it does not and will not during the performance of this contract violate (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, and § 40.1-11.1, Code of Virginia, which prohibits the employment of illegal aliens, and (ii) the provisions of Federal and State employment and wage hour laws. The Contractor shall include and enforce the language in the last sentence in every subcontract issued under this contract and shall require the subcontractor to do the same.
- D. Contractor shall submit the Contractor Certification Form in Section C with their signed contract, certifying their compliance with the provisions of the Federal Immigration Reform and Control Act of 1986 and the Town of Herndon Resolution 09-G-121.
- E. VIRGINIA FREEDOM OF INFORMATION ACT – All proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
  - a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
  - b. Any competitive sealed bidding Bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the Town decides not to accept any of the bids and to reopen the Contract. Otherwise, bid records shall be open to public inspection only after award of the Contract. Any competitive negotiation Offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the Town decides not to accept any of the proposals and to reopen the Contract. Otherwise, proposal records shall be open to the public inspection only after award of the Contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
  - c. Trade secrets or proprietary information submitted by a Bidder, Offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the Bidder or Offeror will submit proprietary information under separate cover. Offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. Bidders shall not mark sections of their bid as proprietary if they are to be part of the award of the Contract and are of a

"Material" nature. The Town reserves the right to submit such information to its Town Attorney for concurrence of the Offeror's claim that it is in fact proprietary. References may be made within the body of the proposal to the proprietary information; however, all information contained within the body of the proposal shall be "public information" in accordance with State statutes.

- d. Nothing contained in this section shall be construed to require the Town, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the Town.

#### A-15 TAXES

All applicable Federal, State and Local Taxes shall be included in the Bidder's proposal.

#### A-16 RIGHT TO REJECT BIDS

The Owner expressly reserves the right to reject any or all bids, to waive any informalities or irregularities in the bids received, and to accept that bid which in its judgment, best serves the interest of the Owner.

#### A-17 PREPARATION AND SUBMITTAL OF FORM OF BID

- A. Bids shall be submitted utilizing the Form of Bid as found herein, or otherwise provided with the Contract Documents, and shall be complete in every respect. The submitted bid package shall consist of one (1) copy of the Form of Bid (Section B) completed as indicated below, The total bid amount shall be entered in words and figures in the space provided. All entries shall be typewritten or printed in ink. The signatures of all persons shall be in longhand. Any entry of amount that appears on the face of the bid to have involved an erasure, deletion, white-out and/or substitution or other such change or alteration, shall show by them the initials of the person signing the bid and the date of the change or alteration. A failure to comply with this requirement may be cause for disqualification of the bid.
- B. Bids shall not contain any restatement or qualifications of work to be done, and alternate bids will not be considered unless called for. No oral, telegraphic or telephonic bids or modifications will be considered.
- C. Bids shall be delivered to the Owner on or before the day and until the hour set for the receipt of bids, enclosed in a sealed envelope and bearing the title of the work, name of Bidder and Bidder's Virginia State Contractor's registration number.
- D. The Bidder will complete Section B - FORM OF BID in the following manner:

1. Sheet B-1

- a. At "From": Enter name and legal address of firm submitting bid,
- b. Item A: Enter the total amount of each bid and total bid, in words and figures,

2. Sheet B-2

- a. Item C: Enter date of receipt of addenda and initial as indicated thereon,
- b. Enter full legal name of the firm, address, phone number and email address.
- c. Insert Bidder's Virginia State Registration Number and Class of licensure, "A" or "B",
- d. Fill in signature, name (typewritten or printed), title or position of principal signing the bid, address and date of signature.
- e. Acknowledge whether escrow account procedures for retained funds will be used

3. Sheet B-3 and B-4

The enclosed Bid Bond form is to be filled in completely, signed, sealed and notarized by both the Principal and the Surety and the appropriate Power(s) of Attorney attached,

4. Sheet B-5

Provide a minimum of three (3) references as indicated on the reference form.

A-18 MODIFICATION OR WITHDRAWAL OF BID

- A. Bidder may withdraw his bid from consideration if the price of the bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic 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. The Bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.
- B. Prior to the time and date designated for receipt of bids, any bid submitted may be modified or withdrawn by notice to the party receiving bids at the place designated for receipt of bids. Such notice shall be in writing over the signature of the Bidder or by email; if by email, written confirmation over the signature of the Bidder shall be mailed and postmarked on or before the date and time set for receipt of bids, and it shall be so worded as not to reveal the amount of the original bid.
- C. Withdrawn bids may be resubmitted up to the time designated for the receipt of Bids provided that they are then fully in conformance with this Information for Bidders.



- D. Bid security, if any is required, shall be in an amount sufficient for the bid as modified or resubmitted.

#### A-19 DETAILED BID BREAKDOWN

The low bidder on lump sum contracts shall provide the Owner a detailed breakdown of his bid using a schedule of values form reflecting appropriate specification Division 1 through 33 within seven (7) working days from bid opening date. In addition to verifying accounting requirement, the breakdown may be used by the Owner to determine whether the Bidder has grossly misjudged the requirements of any area. Failure to provide the requested detailed breakdown may result in rejection of the bid proposal.

#### A-20 AWARD OF CONTRACT

The Contract will be awarded to the lowest responsive and responsible Bidder.

- A. The Town, shall have the authority to waive informalities in bids, reject all bids, or parts of all bids when in its judgment the public interest may be served thereby.
- B. The Lowest Bidder is determined by the aggregate amount of each Bid, plus any Alternates, if applicable, selected by the Owner.
- C. A Responsive Bidder shall mean a Bidder who has submitted a Bid which conforms, in all material respects, to the Bidding Documents.
- D. A Responsible Bidder shall mean a Bidder who has the capability, in all respects, to perform fully the Contract requirements and the moral and business integrity and reliability which will assure good faith performance. In determining responsibility, the following criteria will be considered:
  - 1. The ability, capacity, and skill of the Bidder to perform the contract or provide the service required;
  - 2. Whether the Bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
  - 3. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder;
  - 4. The quality of performance of previous contracts or services. For example the following information will be considered:
    - a. The administrative and consultant cost overruns incurred by Owners on previous contracts with Bidder,

- b. The Bidder's compliance record with Contract General Conditions on other projects,
  - c. The submittal by the Bidder of excessive and/or unsubstantiated extra cost proposals and claims on other projects,
  - d. The Bidder's record for completion of the work within the Contract Time or within Contract Milestones and Bidder's compliance with scheduling and coordination requirements on other projects,
  - e. The Bidder's demonstrated cooperation with the Owner, AE and other contractors on previous contracts,
  - f. Whether the work performed and materials furnished on previous contracts were in accordance with the Contract Documents;
- 5. The previous and existing compliance by the Bidder with laws and ordinances relating to contracts or services;
- 6. The sufficiency of the financial resources and ability of the Bidder to perform the contract or provide the service;
- 7. The quality, availability and adaptability of the goods or services to the particular use required;
- 8. The ability of the Bidder to provide future maintenance and service for the warranty period of the contract;
- 9. Whether the Bidder is in arrears to the Town on debt or contract or is a defaulter on surety to the Town or whether the Bidder's Town taxes or assessments are delinquent;
- 10. Such other information as may be secured by the Department of Public Works or designee, having a bearing on the decision to award the contract, to include, but not limited to:
  - a. The ability, experience and commitment of the Bidder to properly and reasonably plan, schedule, coordinate and execute the Work,
  - b. Whether the Bidder has ever been debarred from bidding or found ineligible for bidding on any other projects.
- E. The purpose of the above is to enable the Town Council in its opinion, to select the bid which is in the best interests of the Town. The ability of the low Bidder to provide the required bonds will not of itself demonstrate responsibility of the Bidder.

F. The Owner reserves the right to require from the Bidder:

- (1) Financial statements for the most recent three consecutive years that have been prepared in accordance with generally accepted accounting principles, and audited by a licensed, independent Certified Public Accountant.
- (2) Bidder's Town Business and Professional Occupation License (BPOL) number.

G. The Owner reserves the right to defer award of this contract for a period of sixty (60) days after the due date of bids. During this period of time, the Bidder shall guarantee the prices quoted in his bid.

A-21. ESCROW ACCOUNT PROCEDURE

For contracts greater than \$200,000.00, Contractors/Bidders have the option to use an Escrow Account Procedure for retained funds by so indicating in the space provided in the Town's Official Bid Form. In the event the Contractor elects to use the Escrow Account Procedure, the "Escrow Agreement" form included in Section C shall be executed and submitted to the Town Purchasing Agent within fifteen (15) calendar days after notification. If the "Escrow Agreement" is not submitted within the fifteen (15) day period, the Contractor shall forfeit his rights to the use of the Escrow Account Procedure.

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**SECTION B  
FORM OF BID**

TO:  
Director  
Department of Public Works  
777 Lynn Street  
Herndon, VA 20170

PROJECT NAME:  
HERNDON CENTENNIAL GOLF  
COURSE TEE RENOVATION PLAN  
  
CONTRACT #B-23-03

BIDS DUE: Monday, April 17, 2023 at 2:00 p.m.

FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- A. Having carefully examined the Contract Documents entitled HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN and having visited the site and examined all conditions affecting the work, the undersigned agrees to furnish all labor, material, equipment, and services necessary for the proper and timely completion of the work as required by said documents.

This bid is subject to all terms and conditions set forth in the Bidding Document, defined in Paragraph A-2 of the Instruction to Bidders. The undersigned agrees, if awarded the Contract, to execute and totally complete the work for the stipulated sum of:

BASE PROPOSAL: HERNDON CENTENNIAL GOLF COURSE TEE  
RENOVATION PLAN:

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_)  
Base Proposal

ALTERNATE:

Hole #3 Drainage Improvements (remove existing metal pipe; install new 24" HDPE pipe) as shown on the Drawings for the lump sum of:

\_\_\_\_\_ DOLLARS (\$ )

Amount shall be indicated in both words and figures. In case of discrepancy, the amount indicated in words will govern.

- B. If notified of acceptance of this proposal and contract award within sixty (60) calendar days after receipt of bids, the undersigned agrees to execute a contract for the above-named project work and the above-stated consideration on the form required, within fifteen (15) calendar days of such notification. The undersigned hereby designates the office address stated on the first page of this proposal as the

address to which a Notice of Award of this construction contract may be delivered and to which all official correspondence and notices may be mailed or delivered unless the Owner is otherwise notified in writing.

- C. The undersigned acknowledges receipt of the following addenda, and that the cost, if any, of such revisions has been included in the bid sum:

Addendum Received (Initial and Date):

Addendum No. 1 _____	Addendum No. 4 _____
Addendum No. 2 _____	Addendum No. 5 _____
Addendum No. 3 _____	Addendum No. 6 _____

- D. The undersigned Bidder states that full compliance with the proposed Contract Documents is maintained in this bid.
- E. Accompanying this bid is the Bid Security required by the Bidding Documents, the same being subject to forfeiture, in the event of default by the undersigned, in accordance with terms of the Bidding Documents.
- F. Bidder understands that the Owner reserves the right to reject any and all bids, waive irregularities or technicalities in any bid, and accept any bid in whole or in part which it deems to be in its best interest.
- G. Bidder agrees that this bid shall be good and may not be withdrawn for a period of sixty (60) calendar days after the public opening and reading of the bids.
- H. Bidder hereby certifies that the Bidder has, or will obtain prior to award of contract, a Town of Herndon Business License.

LEGAL NAME OF

FIRM: \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY/STATE/ZIP \_\_\_\_\_

PHONE# \_\_\_\_\_

EMAIL \_\_\_\_\_

LICENSED VIRGINIA CONTRACTOR CLASS AND NUMBER \_\_\_\_\_

SIGNATURE \_\_\_\_\_

PRINTED NAME \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

[ ] YES [ ] NO Escrow Account Procedures for retained funds will be used? See paragraph A-21 page A-12 and Section C, pages C-9 to C-12.

TOWN OF HERNDON, VIRGINIA  
BID BOND

BOND NO. \_\_\_\_\_

AMOUNT: \$\_\_\_\_\_

DATE: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, \_\_\_\_\_  
that \_\_\_\_\_

\_\_\_\_\_  
(Name)

hereinafter called the PRINCIPAL or CONTRACTOR, and

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Address)

a corporation duly organized under the laws of the State of \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ and authorized to do business in the Commonwealth of Virginia, as SURETY, are held and firmly bound unto the Town of Herndon, Virginia, a municipal corporation of the Commonwealth of Virginia, hereinafter called the OBLIGEE, for a period of not less than sixty (60) days as hereinafter set forth, in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH THAT:

WHEREAS, the PRINCIPAL herewith is submitting his or her Bid or Proposal for Contract #B-23-03, HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN in the Town of Herndon, Virginia, said Bid or Proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE:

(A) If the Bid or Proposal shall remain open for a period of not less than sixty (60) days following opening of the Bids or Proposals and be rejected, or in the alternate,

(B) If the Bid or Proposal shall remain open for a period of not less than sixty (60) days following opening of the Bids or Proposals and be accepted and the PRINCIPAL shall execute and deliver a Contract in the form of Contract appearing in the Bid or Proposal solicitation documents and shall furnish a bond for his or its faithful performance of the Contract, and for the payment of all persons performing Labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of the Bid or Proposal,

THEN, this obligation shall be void; otherwise the same shall remain in full force and effect, it being expressly understood and agreed that the liability of the SURETY for any and all claims hereunder shall, in no event, exceed the said amount of this obligation as herein stated. Provided, however, that in addition to the amount of this obligation as herein stated, the SURETY shall be liable for all costs and attorney's fees incurred by the OBLIGEE in enforcing the obligations hereunder, and for any interest which may be awarded by a court.

The SURETY, for value received, hereby stipulates and agrees that the obligations of the SURETY and its bond shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such Bid or Proposal; and the SURETY does hereby waive notice of such extension.

IN WITNESS WHEREOF, the PRINCIPAL and the SURETY have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year set forth below.

Signed and Sealed this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_

CONTRACTOR:

\_\_\_\_\_  
(Name of Firm)

By: \_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_  
[Print name of authorized signatory]

Its: \_\_\_\_\_  
[Title of authorized signatory]

SURETY:

\_\_\_\_\_  
(Name of Firm)

By: \_\_\_\_\_  
Attorney-In-Fact

Name: \_\_\_\_\_  
[Print name of authorized signatory]

**IMPORTANT:** The SURETY executing bonds must satisfy all requirements for sureties set forth in the Instructions to Bidders.



## REFERENCES

Provide information for at least three (3) similar projects, preferably governmental, that your firm has constructed in the past twenty-four (24) months or are currently underway.

1. PROJECT NAME\_\_\_\_\_
- PROJECT DESCRIPTION\_\_\_\_\_
- ADDRESS\_\_\_\_\_
- CONTACT\_\_\_\_\_
- TITLE\_\_\_\_\_
- PHONE#\_\_\_\_\_
2. PROJECT NAME\_\_\_\_\_
- PROJECT DESCRIPTION\_\_\_\_\_
- ADDRESS\_\_\_\_\_
- CONTACT\_\_\_\_\_
- TITLE\_\_\_\_\_
- PHONE#\_\_\_\_\_
3. PROJECT NAME\_\_\_\_\_
- PROJECT DESCRIPTION\_\_\_\_\_
- ADDRESS\_\_\_\_\_
- CONTACT\_\_\_\_\_
- TITLE\_\_\_\_\_
- PHONE#\_\_\_\_\_
4. PROJECT NAME\_\_\_\_\_
- PROJECT DESCRIPTION\_\_\_\_\_
- ADDRESS\_\_\_\_\_
- CONTACT\_\_\_\_\_
- TITLE\_\_\_\_\_
- PHONE#\_\_\_\_\_

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TOWN OF HERNDON, VIRGINIA

SECTION C

OWNER-CONTRACTOR AGREEMENT

CONTRACT NUMBER: B-23-03

This agreement made this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by and between the Town of Herndon, Virginia, a Virginia municipal corporation  
chartered and organized under the laws of the Commonwealth of Virginia, hereinafter called  
the TOWN or OWNER, and,

\_\_\_\_\_ whose  
(Name)  
principal address is \_\_\_\_\_  
(Address)

hereinafter called the CONTRACTOR. All correspondence, submittals and notices relating  
to or required under this contract shall be sent in writing to the above addresses; unless either  
party is notified in writing by the other, of a change of address.

WITNESSETH:

WHEREAS it is the intention of the Owner to obtain the services of the Contractor in  
connection with the construction of Contract B-23-03, HERNDON CENTENNIAL  
GOLF COURSE TEE RENOVATION PLAN hereinafter referred to as the "Project" or  
the "Work"; and

WHEREAS the Contractor desires to perform such construction in accordance with the  
terms and conditions of this Agreement,

NOW, THEREFORE, in consideration of the promises made herein and other good and  
valuable considerations, the following terms and conditions are hereby mutually agreed  
to, by and between the Owner and Contractor:

Article 1

DEFINITIONS

1.1 All terms in this Agreement which are defined in the Instruction to Bidders and  
the General Conditions shall have the meanings designated therein.

1.2 The Contract Documents are as defined in the General Conditions. Such  
documents form the Contract, and all are as fully a part thereof as if attached to this  
Agreement or repeated herein.

## Article 2

### STATEMENT OF THE WORK

2.1 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work, as required by the Contract Documents.

2.2 The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred there from, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor. The totality of the obligations imposed upon the Contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the "Work".

## Article 3

### ARCHITECT/ENGINEER

3.1 The Architect/Project Engineer (hereinafter referred to as the Owner's Authorized Representative (OAR) and as defined in the General Conditions) shall be Town of Herndon Department of Public Works whose address is 777 Lynn Street, Herndon, Virginia provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as it's OAR and so advising the Contractor in writing, at which time the person or organization so designated shall be the OAR for purposes of this Contract.

## Article 4

### TIME OF COMMENCEMENT AND COMPLETION

4.1 The Contractor shall commence the Work promptly upon the date established in the Notice to Proceed. If there is no Notice to Proceed, the date of commencement of the Work shall be the date of this Agreement or such other date as may be established herein.

4.2 Time is of the essence. The Contractor shall achieve Substantial Completion, as defined in the General Conditions, within 90 calendar days from the date of Notice to Proceed or the date otherwise established for the commencement of Work. This time period shall be designated the Contract Time.

4.3 The Contractor shall also complete the following activities of Work within the Interim Milestone dates indicated, as applicable:

ACTIVITY:

DATE:

There are no Interim Milestones.

4.4 The liquidated damages incurred by the Owner due to the Contractor's failure to complete the Work within the Contract Time, including any extensions thereof, shall be \$250 per day for each consecutive calendar day beyond the Contract Time (Sundays and all holidays included) for which the Contractor shall fail to complete the Work.

4.5 The liquidated damages incurred by the Owner due to the Contractor's failure to complete each activity of Work designated in Article 4.3 above within the applicable Interim Milestone date, as applicable, shall be as hereinafter stated for each Milestone, for each consecutive day beyond the milestone date (Sundays and all holidays included) for which the Contractor shall fail to complete the activity of Work: N/A

4.6 The amount of liquidated damages set forth in Articles 4.4 and 4.5 herein above shall be assessed cumulatively. The items of cost included in the assessment of liquidated damages are as defined in the General Conditions. This provision for liquidated damages does not bar Owner's right to enforce other rights and remedies against Contractor, including but not limited to, specific performance or injunctive relief.

#### Article 5

#### CONTRACT SUM

5.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the sum of

\_\_\_\_\_Dollars(\$\_\_\_\_\_) (herein referred to as the "Contract Sum").

#### Article 6

#### PROGRESS PAYMENTS

6.1 The Contractor hereby agrees that on or about the first day of the month for every month during the performance of the Work he will deliver to the OAR a Pay Request Application in accordance with the provisions of Article 9 of the General Conditions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions.

#### Article 7

OTHER REQUIREMENTS

7.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond and Certification of Insurance as required by the Contract Documents.

7.2 The Contractor shall perform at least 60 percent of the total Work with forces that are in the direct employment of the Contractor's organization.

WITNESS the following signatures and seals.

CONTRACTOR:

\_\_\_\_\_  
(Name of Firm)

By: \_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_  
[Print name of authorized signatory]

Its: \_\_\_\_\_  
[Title of authorized signatory]

TOWN OF HERNDON, VIRGINIA

By: \_\_\_\_\_  
Sheila A. Olem, Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

TOWN OF HERNDON, VIRGINIA  
PAYMENT BOND

BOND NO. \_\_\_\_\_

AMOUNT: \$ \_\_\_\_\_

DATE: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)  
hereinafter called the PRINCIPAL or CONTRACTOR, and

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Address)  
a corporation duly organized under the laws of the State of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ and authorized to do business in the Commonwealth of Virginia, as SURETY, are held and firmly bound unto the Town of Herndon, Virginia, a municipal corporation of the Commonwealth of Virginia, hereinafter called the OBLIGEE, in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), for the payment of which, well and truly be made to the OBLIGEE, the PRINCIPAL and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the PRINCIPAL has executed and entered into a certain Contract with the OBLIGEE, dated \_\_\_\_\_, 20\_\_\_\_, for the completion of the Contract B-23-03 HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN in the Town of Herndon.

NOW, THEREFORE If the PRINCIPAL shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in the Contract, and any authorized extension or modification thereof, including but not limited to all amounts due for materials, lubricants, oil, gasoline, repairs on machinery, equipment, and tools consumed or used in connection with the construction of the work, and all insurance premiums on the work, and for all labor performed in the work, then this obligation shall be void; otherwise to remain in full force and effect. It is understood and agreed by the OBLIGEE, the SURETY, and the PRINCIPAL that the benefits of this bond shall apply only to all those claimants having a direct contractual relationship with the PRINCIPAL and all those claimants having a contract with one in direct contractual relationship with the PRINCIPAL.

PROVIDED, FURTHER, that the SURETY, for value received, hereby stipulates

and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the Contract Documents, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the Contract Documents.

PROVIDED, FURTHER, that no final settlement between the OBLIGEE and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

CONTRACTOR:

\_\_\_\_\_  
(Name of Firm)

By: \_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_  
[Print name of authorized signatory]

Its: \_\_\_\_\_  
[Title of authorized signatory]

SURETY:

\_\_\_\_\_  
(Name of Firm)

By: \_\_\_\_\_  
Attorney-In-Fact

Name: \_\_\_\_\_  
[Print name of authorized signatory]

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

NOTE: Date of bond must not be prior to date of Contract. If PRINCIPAL is a partnership or joint venture, all partners or venturers shall execute bond.

IMPORTANT: Sureties executing bonds must satisfy all requirements set forth in the Instructions to Bidders.



TOWN OF HERNDON, VIRGINIA  
PERFORMANCE BOND

BOND NO: \_\_\_\_\_

AMOUNT: \$ \_\_\_\_\_

DATE: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

hereinafter called the PRINCIPAL or CONTRACTOR, and

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Address)

a corporation duly organized under the laws of the State of \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ and authorized to do business in the Commonwealth of Virginia, as SURETY, are held and firmly bound unto the Town of Herndon, Virginia, a municipal corporation of the Commonwealth of Virginia, hereinafter called the OBLIGEE, in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), for the payment of which, well and truly be made to the OBLIGEE, the PRINCIPAL and the SURETY bind themselves and each of their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents as follows:

THE CONDITIONS OF THE ABOVE OBLIGATION IS SUCH THAT:

WHEREAS, the PRINCIPAL has executed and entered into a certain Contract with the OBLIGEE, dated \_\_\_\_\_, 20\_\_\_\_, for the completion of the Contract B-23-03 HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN, in the Town of Herndon, Virginia.

NOW, THEREFORE If the PRINCIPAL shall at all times duly, promptly, and faithfully perform the Contract and any alteration in or addition to the obligations of the PRINCIPAL arising there under, and shall assure all work required under the Contract against defective workmanship and materials, including the warranty period following final completion by the PRINCIPAL and final acceptance by the OBLIGEE and comply with all the covenants therein contained in the Specifications, Drawings, and other Documents constituting a part of the Contract required to be performed by the PRINCIPAL, in the manner and within the times provided in the Contract, and shall fully indemnify and save harmless the OBLIGEE from all costs and damage which it may suffer by reason or failure so to do, and shall fully reimburse and repay it all outlay and expenses which it may incur in making good any default, and reasonable counsel fees incurred in the prosecution of or defense of any action arising out of or in connection with any such default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the Contract Documents or to the work to be performed there under, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract Documents.

PROVIDED, FURTHER, that no final settlement between the OBLIGEE and the PRINCIPAL shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

CONTRACTOR:

\_\_\_\_\_  
(Name of Firm)

By: \_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_  
[Print name of authorized signatory]

Its: \_\_\_\_\_  
[Title of authorized signatory]

SURETY:

\_\_\_\_\_  
(Name of Firm)

By: \_\_\_\_\_  
Attorney-In-Fact

Name: \_\_\_\_\_  
[Print name of authorized signatory]

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

NOTE: Date of bond must not be prior to date of Contract. If PRINCIPAL is a partnership or joint venture, all partners or venturers shall execute bond.

IMPORTANT: The SURETY named on this bond must satisfy all requirements set forth in the Instructions to Bidders.

TOWN OF HERNDON, VIRGINIA  
ESCROW AGREEMENT

THIS AGREEMENT, MADE AND ENTERED INTO THIS \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_\_\_  
by, and between, and among the Town of Herndon, Virginia ("Town"),

---

(Contractor)

---

(Name of Bank)

---

(Address of Bank)

a trust company, bank, or savings and loan institution with its principal office located in the Commonwealth of Virginia (hereinafter referred to collectively as "Bank" and \_\_\_\_\_ ("Surety") provides:

I.

The Town and the Contractor have entered into a contract with respect to the Contract No. IFB #B-23-03 ("The Contract"). This agreement is pursuant to, but in no way amends or modifies the contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

II.

In order to assure full and satisfactory performance by the Contractor of its obligations under the contract, the Director of Finance is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of the Town, elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the contract or any other instrument of agreement between the Town and the Contractor.

III.

The Town shall from time to time pursuant to its contract pay to the Bank amounts retained by it under the contract. Except as actually withdrawn from escrow by the Town, the Contractor shall look solely to the Bank for the payment of funds under the contract and paid by the Town to the Bank.

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

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

Upon receipt of checks or warrants drawn by the Director of Finance and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit or invest or reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the bank invest the escrowed funds in any security not approved.

#### IV.

The following securities, and none other, are approved securities for all purposes of this Agreement:

1. United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates, of Indebtedness of United Treasury Bills,
2. Bonds, notes and other evidence of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States,
3. Bonds or notes of Commonwealth of Virginia,
4. Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's Investors Service rating of at least "A", and
5. Certificates of deposit issued by commercial Banks located within the Commonwealth, including, but not limited to, those insured by the bank and its affiliates,
6. Any bonds, notes or other evidences of indebtedness listed in Sections (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having combined capital, surplus and undivided profit of not less than \$25,000,000.00, provided the obligation of the Bank to repurchase is within the time limitations established for investment as set forth herein. The repurchase agreement shall be considered a purchase of such securities even of title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the security themselves, and the securities have on the date of the of the repurchase agreement a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder which matures more than five years after the date of its purchase by the Bank or deposit by the Contract.

#### V.

The Contractor may from time to time withdraw the whole or any portion of the escrowed funds by depositing with the bank approved securities in an amount equal to, or in excess of, the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.

Upon receipt of a direction signed by the Town of Herndon Official, the Bank shall pay the principal of the fund, or any specified amount thereof, to the Treasurer of Herndon for the account of the Town of Herndon. Such payment shall be made in cash as soon as it is practicable after receipt of the direction.

Upon receipt of a direction signed by the Town of Herndon Official, the bank shall pay and deliver the principal of the fund, or any specified amount thereof, to the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction.

#### VI.

For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor.

#### VII.

The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the principal of the fund.

#### VIII.

The surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the contract are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written.

TOWN OF HERNDON, VIRGINIA

CONTRACTOR:

\_\_\_\_\_  
(Name of Contractor)

By: \_\_\_\_\_  
Sheila A. Olem, Mayor

By: \_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_  
[Print name of authorized signatory]

Its: \_\_\_\_\_  
[Title of authorized signatory]

BANK: \_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_  
[Print name of authorized signatory]

Its: \_\_\_\_\_  
[Title of authorized signatory]

SURETY \_\_\_\_\_  
[Signature]

Name: \_\_\_\_\_  
[Print name of authorized signatory]

Its: \_\_\_\_\_  
[Title of authorized signatory]

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

TOWN OF HERNDON, VIRGINIA

CONTRACTOR CERTIFICATION FORM

By signing this certification, the undersigned Contractor:

- (1) verifies that it, he, or she does not and will not during the performance of this contract violate or suffer the violation of (i) the provisions of the Federal Immigration Reform and Control Act of 1986, as amended and §40.1-11.1, Code of Virginia, which prohibit the employment of illegal aliens and (ii) the provisions of Federal and State employment and wage hour laws; and
- (2) shall include and enforce the preceding language contained in (1) in every subcontract issued under this contract and shall require the subcontractor to do the same; and
- (3) agrees to undertake for each of its employees working on this contract the Federal I-9 employment eligibility verification process, or federal Employment Eligibility Verification (E-Verify) Program, or both; and the Contractor's agrees to update this assurance for new employees for the duration of the contract; and
- (4) agrees to provide Town access to any public documentation that relates to verifying the employee's legal eligibility for employment in the United States in those cases where the Town harbors a reasonable suspicion that employees of Contractor or Contractor's subcontractor working on this contract may be not legally eligible for employment in the United States.

Contractor Name \_\_\_\_\_

Authorized Contract Signature \_\_\_\_\_

Print Authorized Contract Signature \_\_\_\_\_

Title of Authorized Signature \_\_\_\_\_

Date \_\_\_\_\_

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# THE TOWN OF HERNDON

## GENERAL CONDITIONS

### Section D

For Construction of

## HERNDON CENTENNIAL GOLF COURSE TEE RENOVATION PLAN

## GENERAL CONDITIONS

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# **THE TOWN OF HERNDON**

## **GENERAL CONDITIONS**

### **ARTICLE 1: CONTRACT DOCUMENTS**

#### **1.1 DEFINITIONS**

##### **1.1.1 The Contract Documents**

The Contract Documents consist of the Advertisement or Invitation for Bids, Request for Proposals, Information for Bidders, Insurance Checklist, Official Town Bid Form, Offeror's Bid or Proposal, Bonds, the Notice of Award and the Town/Contractor Agreement, including Conditions of the Contract (General and Supplementary Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of the Agreement. A Modification is either a written Change Order issued pursuant to the provisions of Article 12.5, or a Field Order issued by the Owner pursuant to Article 12.2.

##### **1.1.2 The Contract**

The Contract is the sum of all the Contract Documents. This Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be changed only by a Modification as defined in Article 1.1.1.

##### **1.1.3 The Work**

The Work comprises the completed construction required by the Contract Documents and includes all labor, material, equipment, supplies and other facilities or things necessary to produce such construction, and all materials, equipment and supplies incorporated or to be incorporated in such construction.

##### **1.1.4 The Project**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part.

##### **1.1.5 Furnish, Install, Provide**

The terms "Furnish" or "Install" or "Provide," unless specifically limited in context, mean: furnishing and incorporating a specified item, product or material in the Work, including all labor, materials, and equipment necessary to perform the work required, ready for intended use.

**1.1.6 Firm, Fixed Price or Lump Sum**

The terms "Firm, Fixed Price" or "Lump Sum" mean that the Contract Work shall be performed for the price stated in the Contract without any adjustment based on the Contractor's actual costs unless such adjustment is made by a properly executed Contract Change or Modification.

**1.1.7 Schedule of Values**

The term "Schedule of Values" means the unit prices for portions of the Work submitted by the Contractor and approved by the Owner's Authorized Representative for use in preparing Applications for Payment and pricing Contract Changes. The Schedule of Values shall not alter the Firm, Fixed Price or Lump Sum value of the Contract.

**1.1.8 Miscellaneous Words or Terms**

Whenever they refer to the Work or its performance, "Directed," "Required," "Permitted," "Ordered," "Designated," "Prescribed," and words of like import shall imply the direction, requirements, permission, order, designation or prescription of the Owner and/or the Owner's Authorized Representative, and "Approved," "Acceptable," "Satisfactory," "in the judgment of," and words of like import shall mean approved by or acceptable to or satisfactory to or in the judgment of the Owner and/or the Owner's Authorized Representative. "Approved" means approved in writing, including subsequent written confirmation of prior oral approval and "Approval" means approval in writing, including all aforesaid.

**1.2 EXECUTION, CORRELATION AND INTENT**

**1.2.1** The Contract Documents shall be signed in not less than triplicate by the Owner and the Contractor and each set shall be deemed an original, but all sets shall constitute one and the same instrument.

**1.2.2** By executing the Contract, the Contractor represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work, and represents that his study and observations have been correlated with the requirements of the Contract Documents. The Contractor also represents that he has studied all surveys and investigation reports of subsurface and latent physical conditions referred to in the Contract Documents and made such additional surveys and investigations as he deems necessary for the performance of the Work at the Contract Price in accordance with the requirements of the Contract Documents and that he has correlated the results of all such data with the requirements of the Contract Documents. Failure to make an examination necessary for this determination shall not release the

Contractor from the obligations of this Contract nor be grounds for any claim based upon unforeseen conditions.

- 1.2.3** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Should any work or material be required which is not denoted in the drawings and specifications either directly or indirectly, but which is nevertheless necessary for the proper carrying out of the intent thereof, it is understood and agreed that the same is implied and required and that the Contractor shall perform such work and furnish such materials as fully as if they were completely delineated and prescribed.

Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings unless otherwise specifically defined herein. The Table of Articles, titles, headings, and running headlines are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or cast light upon the interpretation of the provisions to which they refer.

- 1.2.4** The organization of the specifications into divisions, sections and articles, and the arrangement of drawings are for clarity only, and shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade. The Contractor may subcontract the Work in such divisions as he sees fit and he is ultimately responsible for furnishing all work shown on the drawings and/or in the specifications. The Owner shall furnish to Contractor up to five copies of the Contract Documents, and additional copies will be furnished, upon request, at the cost of reproduction.

- 1.2.5** Anything shown on the drawings and not mentioned in the specifications or mentioned in the specifications and not shown on the drawings shall have the same effect as if shown or mentioned respectively in both. Technical specifications take priority over general specifications and detail drawings take precedence over general drawings. Any work shown on one drawing shall be construed to be shown in all drawings and the Contractor will coordinate the work and the drawings. If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: The Town/Contractor Agreement; Changes; Addenda; the Supplementary Conditions; the General Conditions; the Specifications; the drawings; the bonds; the advertisement for bids or invitation or request for proposal; information for bidders; bids; the notice of award; as between schedules and information given on drawings and the scaled measurements, the figures shall govern; as between large-scale drawings and small-scale drawings, the larger scale shall govern. Any such conflict or inconsistency between or in the

drawings shall be submitted to the Owner's Authorized Representative whose decision thereon shall be final and conclusive.

**1.2.6** This Contract is not intended to create, nor shall any provision be interpreted as creating, any contractual relationship between the Owner and any third parties including all Subcontractors.

**1.2.7** The Provisions of this Contract cannot be changed, varied or waived in any respect except by a written Modification or Change Order. No person has authority to orally waive, or to release the Contractor from any of the Contractor's duties or obligations under or arising out of this Contract. Any waiver, approval or consent granted by Changes to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent.

### **1.3 OWNERSHIP AND USE OF DOCUMENTS**

**1.3.1** All drawings, specifications, and copies thereof furnished by or to the Owner under this Contract are and shall remain the property of the Owner. They are to be used only with respect to this Project and are not to be used in whole or in part for any other purpose.

**1.3.2** The Contractor shall be provided five sets of the Contract Documents by the Owner's Authorized Representative. Additional sets of Drawings and Specifications may be obtained from the Owner's Authorized Representative by paying the then current and regular printing, mailing and handling charges.

### **END OF ARTICLE 1**



## **ARTICLE 2: OWNER'S AUTHORIZED REPRESENTATIVE**

### **2.1 DEFINITIONS**

- 2.1.1** The term "Owner's Authorized Representative" as used in the Contract Documents, shall mean the entity so identified in the Town/Contractor Agreement or its duly authorized representatives.
- 2.1.2** The Owner's Authorized Representative is referred to throughout the Contract Documents as if singular in number and masculine in gender.

### **2.2 SERVICES OF THE OWNER'S AUTHORIZED REPRESENTATIVE**

- 2.2.1** The Owner's Authorized Representative (OAR) will serve during construction and until the end of the warranty period. The Owner's Authorized Representative will advise and consult with the Owner and will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Owner may identify a substitute OAR at any time by providing written notice to the Contractor.
- 2.2.2** The Owner's Authorized Representative will inform the Owner and the Contractor whenever in his reasonable opinion any of the Work is proceeding contrary to the requirements of the Contract Documents and will be unacceptable. Failure of the Contractor to take corrective action to make the Work conform to the Contract Documents will subject the Contractor to any and all remedies available to the Owner, including, without limitation, termination pursuant to Article 14. Such notification by the Owner's Authorized Representative will not be a cause for the Contractor to claim either delay of the Work or any increase in the Contract Price.
- 2.2.3** The Owner, the Owner's Authorized Representative and other government representatives shall at all times have access to the Work wherever it is in preparation or progress, to include off-site facilities of subcontractors and suppliers at any tier. The Contractor shall provide safe facilities for such access so the Owner's Authorized Representative may perform his functions under the Contract Documents.
- 2.2.4** All communications, correspondence, submittals and documents exchanged between the Owner's Authorized Representative and the Contractor in connection with the Project shall be through or in the manner prescribed by the Owner and consistent with Article 6 of the Town/Contractor Agreement.

- 2.2.5** The Owner's Authorized Representative shall make recommendations to the Owner in matters relating to aesthetic effect; the decision of the Owner on such aesthetic matters will be final.

**END OF ARTICLE 2**

## **ARTICLE 3: OWNER**

### **3.1 DEFINITIONS**

- 3.1.1** "Owner" means the Town of Herndon, Virginia, unless the Town/Contractor Agreement provides otherwise. The Owner shall be referred to as the "Town," or as the "Owner."
- 3.1.2** The term "Owner" or "Owner's Authorized Representative" specifically excludes any and all inspectors having building code or Town ordinance responsibilities or jurisdiction under the requirements of the Building Permit, unless the Owner designates such person to serve as the Owner's Representative.
- 3.1.3** "Contractor" means the person or persons, firm or company whose bid or proposal has been accepted by the Owner and includes the Contractor's representatives, successors and assigns permitted by the Owner.

### **3.2 INFORMATION, SERVICES AND RIGHTS OF THE OWNER**

- 3.2.1** The Owner and/or the Owner's Authorized Representative will provide administration of the Contract as described below.
- 3.2.2** The Owner or, at the Owner's sole discretion, the Owner's Authorized Representative, will review and process all Progress Payments, including the Final Payment.
- 3.2.3** The Owner shall have the authority to reject the work when, in its opinion, the Work does not conform to the Contract Documents.
- 3.2.4** Whenever in the Owner's reasonable opinion it is necessary or advisable for the implementation of the Contract Documents, the Owner will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed.
- 3.2.5** The Owner shall have the authority and discretion to call, schedule and conduct job meetings to be attended by the Contractor, representatives of his Subcontractors, and the Owner's Authorized Representative to discuss such matters as procedures, progress, problems and scheduling.
- 3.2.6** The Owner or the Owner's Authorized Representative will establish procedures to be followed for processing all Shop Drawings, samples, catalogs and other project submittals, reports and other documentation such as test reports and maintenance manuals.

- 3.2.7** The Owner will review all requests for changes and shall process Change Orders, including applications for extension of the Contract Time.
- 3.2.8** The Owner or the Owner's Authorized Representative shall at all times have access to the Work wherever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
- 3.2.9** The Owner or the Owner's Authorized Representative shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs in connection with the Work, and will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.
- 3.2.10** The Owner or the Owner's Authorized Representative shall not be responsible or liable to the Contractor for the acts, errors or omissions of the Contractor, any separate Subcontractor, any separate Contractor or any Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work.
- 3.2.11** The foregoing rights are in addition to other rights of the Owner enumerated herein and those provided by law.

### **3.3 OWNER'S RIGHT TO STOP OR TO SUSPEND WORK**

- 3.3.1** If the Contractor fails to correct defective Work as required by Article 13.2 "CORRECTION OF WORK," or fails to carry out the Work or supply labor and materials in accordance with the Contract Documents, the Owner by written order may order the Contractor to stop the Work, or any portion thereof, without monetary compensation to the Contractor until the cause for such order has been eliminated.
- 3.3.2** The Owner may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the Owner.
- 3.3.3** If the performance of all or any part of the Work is suspended, delayed, or interrupted by the Owner or the Owner's Authorized Representative for an unreasonable period of time, or by failure of either of them to act within the time specified (or if no time is specified, within a reasonable time), an adjustment increasing the time of performance of the Work shall be made. Such adjustments will be made solely for unreasonable suspension, delay, or interruption. The Contract shall be modified in writing accordingly. However, no claim for an extension of time shall be made under this Article 3.3.3 for any suspension, delay, or interruption pursuant to Article 3.4.1, or for which claim is provided or excluded under any other provision of this Contract.

No claim under this Article 3.3.3 shall be allowed for any claim for an extension of time required for performance, unless within twenty days after the act or failure to act involved, the Contractor submits to the Owner's Authorized Representative a written statement setting forth, as then practicable, the extent of such claimed time extension and unless the claim for an extension of time is submitted with supporting data within thirty days after the termination of such suspension, delay, or interruption.

**3.3.4** In the event of a suspension of work or delay or interruption of work, the Contractor will and will cause his Subcontractors to protect carefully his, and their, materials and work against damage from the weather and maintain completed and uncompleted portions of the work as required by the Contract Documents. If, in the opinion of the Owner's Authorized Representative, any work or material shall have been damaged by reason of failure on the part of the Contractor or any of his Subcontractors to protect same, such work and materials shall be removed and replaced at the expense of the Contractor.

**3.3.5** No claim by the Contractor under Article 3.3.3 shall be allowed if asserted after Final Payment under this Contract.

#### **3.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

**3.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after the seven day period give the Contractor a second written notice to correct the deficiencies within a three day period. If the Contractor fails to commence and continue to correct any deficiencies within the second notice's three day period, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such a case an appropriate Change Order shall be issued pursuant to Article 12 deducting from the payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for services of the Owner's Authorized Representative and any other additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay on demand the difference to the Owner.

**3.4.2** The Owner will not be liable or accountable to the Contractor for the method by which the work; or any portion thereof, performed by the Owner or by separate contractors pursuant to Article 3.4 is accomplished or for the price paid therefor. Notwithstanding the Owner's right to carry out a portion of the Work, maintenance and protection of the Work remains the Contractor's responsibility.

### **3.5 EXAMINATION OF RECORDS**

- 3.5.1** The Owner, or any duly authorized representative, shall, until the expiration of three years after final payment hereunder, have access to and the right to examine, audit and copy any directly pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract. Any audit or examination shall occur during regular business hours and not exceed a reasonable period of time under the circumstances.
- 3.5.2** The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the Owner or any duly authorized representative shall, until the expiration of three years after final payment under the Contract, have access to and the right to examine, audit and copy, without charge, any directly pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this Contract. The term subcontract shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.
- 3.5.3** The period of access provided in Subparagraphs 3.5.1 and 3.5.2 above shall continue for all contracts and subcontracts until any appeals, litigation, or claims have been finally concluded.
- 3.5.4** Nothing in these General Conditions shall be deemed to modify in any manner any applicable statute of limitations.

### **END OF ARTICLE 3**

## **ARTICLE 4: CONTRACTOR**

### **4.1 DEFINITION**

- 4.1.1** The Contractor is the person or organization identified as such in the Town/Contractor Agreement. The term Contractor means the Contractor or his authorized representative, who shall have authority to bind the Contractor in all matters pertinent to this Contract.
- 4.1.2** The Contractor is not an agent for the Owner but is an independent contractor engaged in the business of providing the services and performing the Work described in the Contract Documents.

### **4.2 REVIEW OF CONTRACT DOCUMENTS**

- 4.2.1** Before submitting his bid or proposal to the Owner, and continuously after execution of the Contract, the Contractor shall carefully study and compare the Contract Documents and shall at once report to the Owner any error, inconsistency or omission he may discover, including any requirement that may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. By submitting his bid or proposal for the Contract and the Work under it, the Contractor agrees that the Contract Documents are accurate, consistent and complete. The Contractor shall perform no portion of the Work at any time without Contract Documents and, where required, approved shop drawings, product data, samples, mock ups or other submittals for such portion of the Work

### **4.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

- 4.3.1** The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for and have control over all construction means, uses, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work under the Contract.
- 4.3.2** The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors, Suppliers, their agents and employees, and other persons performing any of the work and for their compliance with each and every requirement of the Contract Documents, in the same manner as if they were fully employed by the Contractor.
- 4.3.3** The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by acts, failures to act or duties of the Owner or the Owner's Authorized Representative in their administration of the Contract, or by inspections, tests, or approvals (or the lack thereof) required or performed under Article 4.4 "INSPECTION" or Article 7.5 "TESTS" by persons other than the Contractor.

- 4.3.4** The Contractor shall employ no plant, equipment, materials, methods or persons to which the Owner or Owner's Authorized Representative reasonably objects.
- 4.3.5** The Contractor shall not remove any portion of the Work or stored materials from the site of the Work.
- 4.3.6** The Contractor shall perform at least the percentage of the Work specified in the Contract with forces that are in the direct employment of the Contractor's organization. The Contractor shall submit to the Owner's Authorized Representative within thirty calendar days after award of the Contract, a designation of the Work to be performed by the Contractor with his own forces. The percentage of the Work to be performed under subcontract shall be calculated by adding the amounts of all subcontracts and dividing this sum by the total Contract Price. No portion of the Contract shall be subcontracted or otherwise performed by a party not the Contractor, except with the written consent of the Owner.

#### **4.4 INSPECTION OF CONSTRUCTION**

- 4.4.1** The Contractor shall be responsible for coordinating with the Project Engineer regarding the scheduling of inspection and testing services as required to ensure that the Work called for by this Contract conforms to Contract requirements. The Contractor shall maintain complete copy of all inspection records and make them available to the Owner and Owner's Authorized Representative. All work is subject to inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.

#### **4.5 CONTRACTOR'S REPRESENTATIONS**

- 4.5.1** By entering into this Contract with the Owner, the Contractor represents and warrants the following, together with all other representations and warranties in the Contract Documents:
- .1 That he is experienced in and competent to perform the type of work required and to furnish the plant, materials, supplies or equipment to be so performed or furnished by him;
  - .2 That he is financially solvent, able to pay his debts as they mature, and possessed of sufficient working capital to initiate and complete the Work and Changes required under the Contract;
  - .3 That he is familiar with all laws, ordinances, permits, regulations and resolutions that may in any way affect the Work or those



employed therein, including but not limited to any special laws or regulations related to Contractor licenses and/or registrations for the Work or any part thereof;

- .4 That such temporary and permanent work required by the Contract Documents that is to be done by him will be satisfactorily-constructed and fit for use for its intended purpose and that such construction will not injure any person, or damage any property;
- .5 That he will fully comply with all requirements of the Contract Documents;
- .6 That he will perform the Work in a skillful manner consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the Owner;
- .7 That he will furnish efficient business administration and experienced superintendence and an adequate supply of workers, equipment, tools, and materials at all times;
- .8 That he has carefully reviewed the Work required and that the Work can be planned and executed in a normal and orderly sequence of Work and reasonably scheduled so as to insure completion of the work in accordance with the Contract Documents, allowing for normal and reasonably foreseeable weather, labor and other delays, interruptions and disruptions of the Work at the site designated;
- .9 That he will complete the Work within the Contract Time and all portions thereof within any required Contract milestones;
- .10 That his Contract Price is based upon the labor, materials, systems and equipment required by the Contract Documents, without exception; and
- .11 By signing this contract, the Contractor certifies that it does not and will not during the performance of this contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended, which prohibits the employment of illegal aliens, and Federal and State employment and wage hour laws.

## **4.6 LABOR AND MATERIALS**

- 4.6.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Contract Documents and any applicable code or statute, whether specifically required by the Contract Documents, or whether their provision may reasonably be inferred as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final Payment will not be made until the Work is so completed.
- 4.6.2** Whenever materials or equipment are specified or described in the Drawings or Specifications by using the name of a proprietary item or the name of a particular manufacturer, fabricator, supplier, or distributor, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other manufacturers, fabricators, suppliers or distributors may be accepted by the Owner's Authorized Representative if sufficient information is submitted by the Contractor to allow the Owner's Authorized Representative to determine that the material or equipment proposed is equivalent to that name.
- 4.6.3** Requests for review of substitute items of material and equipment will not be accepted by the Owner's Authorized Representative from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make written application to the Owner's Authorized Representative for acceptance thereof, certifying that the proposed substitute will perform adequately the functions called for by the general design, be similar and of equal substance to that specified, and be suited to the same use and capable of performing the same function as that specified. The application shall state whether or not acceptance of the substitute for use in the work will require a change in the drawings or specifications to adapt the design to the substitute and whether or not incorporation or use of the substitute in connection with the work is subject to payment of a license fee or royalty. All variations of the proposed substitute from that specified shall be identified in the application and available maintenance, repair, and replacement service shall be indicated.
- 4.6.4** The Contractor shall submit complete data substantiating compliance of the proposed substitution with the Contract documents, including:
- .a Product identification including manufacturer's name, address and phone number;

- .b Manufacturer's literature showing complete product description, performance and test data, and all reference standards;
- .c Samples and colors in the case of articles or products;
- .d Name and address of similar projects on which the product was used and date of installation;
- .e For construction methods, include a detailed description for the proposed method and drawings illustrating same;
- .f Itemized comparison of proposed substitution with product or method specified and any cost reduction which shall benefit the Owner;
- .g Accurate cost data on proposed substitution with product or method specified and any cost reduction which shall benefit the Owner;
- .h All directions, specifications and recommendations by manufacturers for installation, handling, storing, adjustment and operation.

**4.6.5** The Contractor shall also submit with his request for approval a sworn and notarized statement that shall include the following representations:

- .a That he has investigated the proposed product or method and determined that it is equal or better in all respects to that specified and that it fully complies with all requirements of the Contract documents;
- .b That he will meet all Contract obligations with regard to the substitution;
- .c That he will coordinate installation of accepted substitutions into the work, making all such changes and any required schedule adjustment, at no additional cost to the Owner, as may be required for the Work to be complete in all respects;
- .d He waives all claims for additional costs and additional time related to substitutions which consequently become apparent. He also agrees to hold the Owner harmless from claims for extra costs and time incurred by other Subcontractors and suppliers, or additional services which may have to be performed by the Owner's Authorized Representative, for changes or extra work

that may, at some later date, be determined to be necessary in order for Work to function in the manner intended in the Contract Documents.

- .e He will provide the same warranty and guarantee, and perform any work required in accordance therewith, for the substitution that is applicable to the specified item for which the substitution is requested;
- .f Material will be installed, handled, stored, adjusted, tested, and operated in accordance with the manufacturers' recommendations and as specified in the Contract documents;
- .g In all cases new materials will be used unless this provision is waived by notice from the Owner or the Owner's Authorized Representative or unless otherwise specified in the Contract Documents;
- .h All material and workmanship will be in every respect in accordance with that which, in the opinion of the Owner or the Owner's Authorized Representative, is in conformity with approved current practice;
- .i He has provided accurate cost data on the proposed substitution in comparison with the product or method specified.

**4.6.6** The application shall also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change. All of the foregoing shall be considered by the Owner's Authorized Representative in evaluating the proposed substitute. The Owner's Authorized Representative may require the Contractor to furnish at the Contractor's expense additional data about the proposed substitute. The Owner's Authorized Representative shall make a recommendation to the Owner concerning the acceptability. The Owner shall be the sole judge of acceptability, and no substitute shall be ordered or installed without the Owner's prior written acceptance. The Owner may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute.

**4.6.7** If a substitution is approved, no additional change in brand or make will be permitted unless satisfactory written evidence is presented to and approved by the Owner showing that the manufacturer cannot make scheduled delivery of the approved substituted item. Substitutions will not be considered by the Owner if

- .a The proposed substitution is indicated or implied on the Contractor's shop drawing or product data submittals and has not been formally submitted for approval by the Contractor in accordance with the above-stated requirement; or
- .b Acceptance of the proposed substitution will require substantial revisions to the Contract Document or is otherwise not acceptable to the Owner or his authorized representative.

**4.6.8** The Contractor shall not have any right of appeal from the decision of the Owner rejecting any materials submittal if the Contractor fails to obtain the approval of the Owner for substitution under this Article.

**4.6.9** Manufactured articles, material and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer unless herein specified to the contrary.

**4.6.10** Whenever it is specified that any material, process, or equipment shall conform to the standard specifications of any of the societies or associations which publish such standards, the meaning of the specifications shall be that the latest supplement, edition or revision of the standard specified shall apply, unless specifically noted otherwise.

**4.6.11** All equipment, apparatus, or devices of any kind to be incorporated into the Work that are shown or indicated on the drawings or called for in the specifications or required for the completion of the Work shall be entirely satisfactory to the Owner's Authorized Representative as regards operations, capacity, or performance. No approval, either written or oral, of any drawings, descriptive data, or samples of such equipment, apparatus, or device shall relieve the Contractor of his responsibility to turn over the same in good working order for its intended purpose at the completion of the Work in complete accordance with the Contract Documents. Any equipment, apparatus and/or device not fulfilling these requirements shall be removed and replaced by proper and acceptable equipment, or put in good working order satisfactory to the Owner's Authorized Representative without additional cost to the Owner.

**4.6.12** The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The Owner may, by written notice, require the Contractor to remove from the Work any employee the Owner deems incompetent, careless or otherwise objectionable.

## **4.7 WARRANTY**

**4.7.1** The Contractor guarantees and warrants to the Owner all work as follows:

- .1 That all materials and equipment furnished under this Contract will be new and the best of its respective kind unless otherwise specified;
- .2 That all Work will be first-class quality and free of omissions and faulty, poor quality, imperfect or defective materials or workmanship;
- .3 That where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds;
- .4 That all applicable Work shall be entirely watertight and leakproof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement;
- .5 That the Work, including but not limited to, mechanical and electrical machines, devices and equipment shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;
- .6 That consistent with requirements of the Contract Documents, the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment; and
- .7 That the Work will be free of abnormal or unusual deterioration that occurs because of poor quality materials, workmanship or unsuitable storage.

**4.7.2** All work not conforming to guarantees and warranties specified in the Contract Documents, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner's Authorized Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Article 13 "UNCOVERING AND CORRECTION OF WORK."

**4.7.3** The warranties set forth in this Article 4.7 and elsewhere in the Contract Documents shall survive Final Completion of the Work under Article 9.8 "FINAL COMPLETION AND FINAL PAYMENT."

**4.7.4** If, within one year after the Date of Final Completion of the Work or designated portion thereof or within one year after acceptance by the Owner of designated equipment or within such longer period as may be prescribed by law or by the terms of the applicable special warranty required by the Contract Documents, any of the Work is found to be defective, not in accordance with the Contract Documents, or not in accordance with the guarantees and warranties specified

in the Contract Documents, the Contractor shall correct it within five working days, or such other period as agreed, after receipt of written notice from the Owner or Owner's Authorized Representative to do so.

**4.7.5** If at any time deficiencies in the Work are discovered that are found to have resulted from latent defects, gross mistakes, fraud or misrepresentation by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work or any damage that the Owner has incurred, or will incur, related thereto, regardless of the time limit of any guarantees or warranty.

**4.7.6** Any materials or other portions of the Work, installed, furnished, or stored on site that are not of the character or quality required by the specifications, or are otherwise not acceptable to the Owner's Authorized Representative shall be immediately removed and replaced by the Contractor to the satisfaction of the Owner's Authorized Representative when notified to do so by the Owner's Authorized Representative.

**4.7.7** If the Contractor fails to correct defective or nonconforming Work as required by Article 4.7.4 or Article 4.7.5 or, if the Contractor fails to remove defective or nonconforming Work from the site, as required by Article 4.7.6, the Owner may elect to either correct such Work in accordance with Article 3.4 "OWNER'S RIGHT TO CARRY OUT THE WORK" or remove and store materials and equipment at the expense of the Contractor.

**4.7.8** The Contractor shall bear the cost of making good all work of the Owner, separate contractors or others, destroyed or damaged by such correction or removal required under this Article, Article 13 "UNCOVERING AND CORRECTION OF WORK" or elsewhere in the Contract Documents.

#### **4.8 TAXES**

**4.8.1** The Contractor shall pay all applicable Federal, State, and local taxes and duties for the Work or portions thereof provided by the Contractor that are legally enacted at the time the Contract is awarded, whether or not yet effective. Increases in the rates of such taxes and duties during performance of the Contract shall be the responsibility of the Contractor.

#### **4.9 PERMITS, FEES AND NOTICES**

**4.9.1** The Contractor shall secure and pay for all permits, fees, licenses and inspections necessary for the proper execution and completion of the Work that are legally required at the time the proposals are received.

- 4.9.2** The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

**4.10 SUPERINTENDENT**

- 4.10.1** The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall be an authorized representative of the Contractor and all communications given to the Superintendent shall be as binding as if given to the Contractor.

- 4.10.2** The Superintendent shall be in attendance at the Project site not less than eight hours per day, five days per week, unless the job is closed down due to a general strike or conditions beyond the control of the Contractor or until termination of the Contract in accordance with the Contract Documents. It is understood that such Superintendent shall be approved in writing by the Owner and shall be the one who will continue in that capacity for the duration of the Project, unless the Superintendent ceases to be on the Contractor's payroll or his withdrawal is required or approved by the Owner. The Superintendent shall not be employed on any other project for or by the Contractor or any other entity during the course of the Work.

- 4.10.3** Such Superintendent shall be fluent in English and in such other languages as may be necessary to communicate effectively with all employees and subcontractors of the Contractor. This requirement may be satisfied by the on-site presence of a competent foreign language interpreter to English interpreter. Any costs associated with foreign language interpretation shall be borne by the Contractor.

- 4.10.4** Any and all project documents, including but not limited to daily reports and logs, maintained by the Superintendent or the Contractor's employees or subcontractors shall be in English. Any costs of foreign language translation shall be borne solely by the Contractor and shall not be a basis for any additional compensation or time extension from the Owner.

**4.11 PROJECT SCHEDULES**

- 4.11.1** The Contractor shall prepare and submit to the Owner's Authorized Representative for the Owner's review, such Schedules for the Work as are required by the Supplementary Conditions or other Contract Documents.



## **4.12 RESPONSIBILITY FOR COMPLETION**

**4.12.1** The Contractor shall furnish such labor, materials, tools, equipment, and professional services and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to ensure the performance of the Work within Milestone and Completion dates specified in the Town/Contractor Agreement. If it becomes apparent to the Owner's Authorized Representative that the Work will not be Completed within required Milestone or Completion dates, the Contractor agrees to undertake some or all of the following actions, at no additional cost to the Owner, in order to ensure, in the opinion of the Owner's Authorized Representative, that the Contractor will comply with all Milestone and Completion date requirements:

- .1 Increase labor, materials, tools, equipment and professional services;
- .2 Increase the number of working hours per shift, shifts per working day, working days per week, or any combination of the foregoing; and
- .3 Reschedule activities to achieve maximum practical concurrency of accomplishment of activities.

**4.12.2** If the actions taken by the Contractor are not satisfactory, the Owner or the Owner's Authorized Representative may direct the Contractor to take any and all actions necessary to ensure completion within the required completion dates, without additional cost to the Owner. In such event, the Contractor shall continue to assume responsibility for his performance and for completion within the required dates.

**4.12.3** If, in the opinion of the Owner or the Owner's Authorized Representative, the actions taken by the Contractor pursuant to this Agreement or the progress or sequence of work are not accurately reflected on the Construction schedule, the Contractor shall revise such schedule to accurately reflect the actual progress and sequence of work.

**4.12.4** This provision does not eliminate the Contractor's responsibility to comply with the Town noise ordinances, all Town permit requirements and all other applicable laws, regulations, rules, ordinances, resolutions, and permit requirements.

## **4.13 DOCUMENTS, SAMPLES AND OTHER SUBMITTALS AT THE SITE**

**4.13.1** The Contractor and his Subcontractors shall maintain at the site, and at all times make available to the Owner and the Owner's Authorized Representative one record copy of all Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data,

Samples, Mock Ups and other Submittals. These shall be delivered to the Owner's Authorized Representative no later than with the application for Final Payment.

- 4.13.2** The Contractor shall keep one copy of the Contract Documents, Virginia Department of Transportation Road and Bridge Standards and Specifications, Town of Herndon Public Facilities Manual, Town of Herndon Critical Structures Manual, and Town of Herndon Water Main Design and Construction Standards on the jobsite, in good order, available to the Owner and the Owner's Authorized Representative at all times.

**4.14 SHOP DRAWINGS, PRODUCT DATA, SAMPLES AND OTHER SUBMITTALS**

- 4.14.1** The term "shop drawings" shall mean all drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by Contractor, a subcontractor, manufacturer, supplier or distributor and which illustrate the equipment, material or some portion of the Work.

- 4.14.2** The Contractor shall submit with reasonable promptness and in such sequence as to cause no delay in the Work or in the work of the Owner or any separate Contractor, all Shop Drawings, Product Data, Manuals, Samples, and Submittals required by the Contract Documents.

- 4.14.3** By approving and submitting Shop Drawings, Product Data, Manuals, Samples and Submittals, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall adhere to any supplementary processing and scheduling instructions pertaining to any submittals that may be issued by the Owner's Authorized Representative.

- 4.14.4** Parts and details not fully indicated on the Contract Drawings shall be detailed by the Contractor in accordance with standard engineering practice. Dimensions on the Contract Drawings, as well as detailed drawings themselves, are subject in every case to measurements of existing, adjacent, incorporated and completed work; that shall be taken by the Contractor before undertaking any work dependent on such data.

- 4.14.5** Where the Contract Documents call for the submittal of manufacturer's data to the Owner or the Owner's Authorized Representative for information only, such submittals shall be made before the commencement of any portion of the work requiring such submission.

- 4.14.6** The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by virtue of the review by the Owner or the Owner's Authorized Representative of Shop Drawings, Product Data, Samples or Manuals unless the Contractor has specifically informed the Owner's Authorized Representative in writing of such deviation at the time of submission and the Owner's Authorized Representative has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data, Samples or Manuals by the Owner or Owner's Authorized Representative's review thereof.

**4.15 CUTTING AND PATCHING OF WORK**

- 4.15.1** The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the work and to make its several parts fit properly and in accordance with the Contract Documents.
- 4.15.2** The Contractor shall not damage or endanger any portion of the Work or the work of the Owner or any separate Contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of the Owner or any separate Contractor except with the written consent of the Owner and of such separate Contractor. The Contractor shall not unreasonably withhold from the Owner or any separate Contractor his consent to cutting or otherwise altering the Work. The Owner shall not be required to accept work with a cut, a splice, or patch when such cut, splice or patch is not generally accepted practice for the particular work involved or is otherwise unworkmanlike in the opinion of the Owner or the Owner's Authorized Representative.

**4.16 RIGHT TO PUBLISH**

The Contractor otherwise agrees that he will not publish, cause to be published, or otherwise disseminate any information of whatever nature relating to the work performed under this Contract, except as may be approved by the Owner in writing.

**4.17 NON-DISCRIMINATION IN EMPLOYMENT**

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

- .1 The Contractor will not discriminate against any employee or applicant for employment because of race, religion, disability, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor and the Contractor agrees to post in conspicuous places,

available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;

- .2 The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer;
- .3 Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation, shall be deemed sufficient for the purpose of meeting the requirements of this provision; and
- .4 The Contractor will include the provisions of paragraphs .1, .2, .3 above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon every Subcontractor or vendor.

#### **4.18 SIGNS**

The Contractor; may at his option and without cost to the Owner, erect signs acceptable to the Owner on the site of the Contract for the purpose of identifying and giving directions to the job. No signs shall be erected without prior approval of the Owner as to design and location.

#### **4.19 CLEANING UP**

- 4.19.1** The Contractor at all times shall keep the project site and all surrounding public streets and neighboring property free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work and before Final Payment is made, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, equipment and surplus materials. The Contractor shall also thoroughly clean and leave reasonably dust free all interior of all buildings included in the Contract, and thoroughly clean all glass installed under the Contract including the removal of all paint and mortar splatters and other defacements.
- 4.19.2** If the Contractor fails to clean up during or at the completion of the Work, the Owner may do so as provided in Article 6.3 "OWNER'S RIGHT TO PERFORM DISPUTED WORK" and the cost thereof shall be charged to the Contractor.
- 4.19.3** The Contractor shall take all reasonable steps, including but not limited to providing a wash down area, to prevent mud, dirt, and other material from accumulating upon the public streets.

- 4.19.4** During and at the completion of the work, the Contractor shall prevent site soil erosion, the runoff of silt or debris carrying water from the site, and the blowing of debris off the site in accordance with the applicable requirements and standards of the Virginia Erosion and Sediment Control Handbook, latest edition, and the Contract Documents.

**4.20 ROYALTIES AND PATENTS**

- 4.20.1** Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of 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 Owner or Owner's Authorized Representative its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents. Contractor shall indemnify, defend and hold harmless Owner and Owner's Authorized Representative and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of 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.

**4.21 ANTI-TRUST**

By entering into a contract the Bidder conveys sells assigns and transfers to the Town of Herndon all rights title and interest in and to all causes of the action it now may have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular good(s) or service(s) purchased or acquired by the Owner under said contract.

**4.22 INDEMNIFICATION**

- 4.22.1** To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, and hold harmless the Owner, the Owner's Authorized Representative, their agents, representatives, employees, successors and assigns from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to, attorneys' fees, arising out of or resulting from the performance of the Work, provided that any such claim, action, judgment, cost, liability, penalty, damage, loss or expense:

- .1 Is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom; and
- .2 Is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor or supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

The Contractor shall not be obligated to indemnify the Owner or the Owner's Authorized Representative hereunder for any damages or injuries, including death, the proximate cause of which is the sole negligence of the Owner or the Owner's Authorized Representative, consistent with Va. Code § 11-4.1.

Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Article 4.22

- 4.22.2** In any and all claims against the Owner and the Owner's Authorized Representative or any of their agents, representatives, or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Article 4.22 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 4.22.3** No provision of Article 4.22 shall give rise to any duties on the part of the Owner or the Owner's Authorized Representative, or any of their agents, representatives or employees.
- 4.22.4** The obligations of the Contractor under Article 4.22 shall not extend to the liability of the Owner's Authorized Representative, or the Owner's design architect or engineers, their agents or employees arising out of (a) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (b) the giving of or the failure to give directions or instructions by Owner's Authorized Representative, his agents or employees provided such giving or failure to give is the primary cause of injury or damage.

#### **4.23 PERSONS AUTHORIZED TO SIGN DOCUMENTS**

The Contractor, within five days after the earlier of the date of a Notice to Proceed or the date of the Town/Contractor Agreement shall file with the Owner's Authorized Representative a list of all persons who are authorized to sign documents such as contracts, certificates and affidavits on behalf of the

Contractor and to fully bind the Contractor to all the conditions and provisions of such documents.

#### **4.24 ASBESTOS AND OTHER HAZARDOUS SUBSTANCES**

**4.24.1** Whenever and wherever during the course of performing any work under this contract, the Contractor discovers the presence of asbestos or other hazardous substances or suspects the presence of any hazardous substances, he shall stop the work immediately, secure the area, notify the Owner 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, suspected asbestos or any other hazardous or suspected hazardous substances, then a mutually agreed extension of time to perform the work shall be allowed the Contractor.

**4.24.2** Any claims for extension of time shall be subject to the provisions of Article 8.

**4.24.3** If the items/products to be purchased are "Hazardous Substances" as defined by 15 U.S.C. § 1261, then the Bidder, by submitting a bid, certifies and warrants that the items or products to be delivered under the Contract shall be properly labeled as required by the foregoing sections and that by delivering the items/products, the Bidder does not violate any of the prohibitions of 15 U.S.C. § 1263.

**4.24.4** Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the bid or delivery for each chemical and/or compound offered and/or purchased. Failure on the part of the Bidder to submit such data may be cause for declaring the bid as nonresponsive.

#### **END OF ARTICLE 4**

## **ARTICLE 5: SUBCONTRACTORS**

### **5.1 DEFINITIONS**

- 5.1.1** A Subcontractor is any firm, supplier, distributor or vendor that performs work for or furnishes services, equipment or supplies to or for the Contractor or another Subcontractor in conjunction with the Contract. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative. Although the term Sub-subcontractor may appear within the Contract Documents, the term Subcontractor includes any person or entity who has a direct or indirect contract with the Contractor to perform any of the Work.
- 5.1.2** The Contractor shall be fully responsible to the Owner for all acts and omissions of his Subcontractors, and of persons and organizations directly or indirectly employed by them, and of persons and organizations for whose acts any of them may be liable, to the same extent that he is responsible for the acts and omissions of persons directly employed by him.
- 5.1.3** Nothing contained in the Contract Documents is intended to, nor shall it create, any contractual relationship between the Owner, the Owner's Authorized Representative, or any of their agents, consultants, employees, independent contractors, or representatives and any Subcontractor, but the Owner shall be entitled to performance of all obligations intended for its benefit, and to enforcement thereof.
- 5.1.4** The Owner's Authorized Representative will not deal directly with any Subcontractor. Communication will be made only through the Contractor. Subcontractors shall route requests for information or clarification through the Contractor to the Owner's Authorized Representative.

### **5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

- 5.2.1** The Contractor shall within fourteen days after award of the Contract furnish to the Owner's Authorized Representative in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work. The Owner's Authorized Representative will promptly reply to the Contractor in writing stating whether the Owner has objection to any such proposed person or entity.
- 5.2.2** The Contractor shall not contract with any such proposed Subcontractor to whom the Owner has made objection under the provisions of Article 5.2.1. The Contractor shall not be required to contract with anyone to whom he has an objection.



**5.2.3** If the Owner objects to any proposed Subcontractor under Article 5.2.1, the Contractor shall name a substitute to whom the Owner has no objection within fifteen days.

**5.2.4** The Contractor shall make no substitution for any Subcontractor previously proposed by the Contractor and not objected to by the Owner's Authorized Representative if the Owner makes objection to such substitution.

### **5.3 SUBCONTRACTUAL RELATIONS**

**5.3.1** By an appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by these Documents, assumes toward the Owner.

This agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor. The subcontracting will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor Agreements, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with his Subcontractors.

The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Article 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract that may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Contract Documents available to his Sub-subcontractors or Suppliers.

**5.3.2** The Contractor shall be liable to and indemnify, defend and hold the Owner harmless from all costs, expenses, fees, attorney's fees, accountant's fees, damages and claims arising because of the Contractor's failure to comply with the provisions of this Article 5.3.

### **5.4 QUALIFICATION SUBMITTALS**

**5.4.1** Specific qualification submittals may be required of Subcontractors for certain critical items of the Work. Required qualification submittals are set forth in detail in the Contract Documents and shall be collected and submitted by the Contractor to the Owner's Authorized Representative for review and approval by the Owner and Owner's Authorized Representative. All information required of a single Subcontractor shall be contained in a single, complete

submittal. The Contractor shall submit the required qualification information within ten days after receipt of the Owner's Authorized Representative's request.

**5.4.2** The Owner may reject any proposed Subcontractor, or any qualification submittals related thereto, for the following reasons:

- .1 The Contractor's failure to submit requested information within the specified time; or
- .2 The Contractor's failure to provide all of the requested information; or
- .3 The Contractor's submission of a Subcontractor, or its qualifications, that are unacceptable to the Owner.

**5.4.3** Should the Owner have objection to any proposed Subcontractor, the Contractor shall submit another firm for approval within fifteen days.

**END OF ARTICLE 5**

## **ARTICLE 6: WORK BY OWNER OR BY SEPARATE CONTRACTORS**

### **6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS**

**6.1.1** The Owner reserves the right to perform work related to the Project with its own forces, and to award separate contracts in connection with other portions of the Project or other work on the site.

**6.1.2** When separate contracts are awarded for different portions of the Project or other work on the site, the term Contractor in the Contract Documents in each case shall mean the Contractor who executes each separate Town/Contractor Agreement.

### **6.2 MUTUAL RESPONSIBILITY**

**6.2.1** The Contractor shall afford other Contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate the Work with that of the Owner and other Contractors, to store his tools, materials and equipment in such orderly fashion at the site of the Work as will not unduly or unreasonably interfere with the progress of the Work or the work of any other Contractors.

**6.2.1.1** If the execution or result of any part of the Work depends upon any work of the Owner or of any separate Contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report in writing to the Owner's Authorized Representative any apparent discrepancies or defects in such work of the Owner or of any separate Contractor that render it unsuitable for such proper execution or result of any part of the Work under this Contract.

**6.2.1.2** Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner or separate Contractor's work as fit and proper to receive the Work, except as to defects that may develop in the Owner's or separate Contractor's work after completion of the Work, and that the Contractor could not have discovered by its inspection prior to completion of the Work under this Contract.

**6.2.2** Should the Contractor cause damage to the Work or property of the Owner or of any separate Contractor on the Project, or to other work on the site, or delay or interfere with the Owner's work on ongoing operations or facilities or adjacent facilities of the Contractor's work, the Contractor shall be liable for the same and, in the case of another Contractor, the Contractor shall attempt to settle such claim with such Contractor prior to such other Contractor's institution of litigation.

**6.3 OWNER'S RIGHT TO PERFORM DISPUTED WORK**

- 6.3.1** If a dispute arises between the Contractor and separate Contractors as to their responsibility for cleaning up as required by Article 4.19 "CLEANING UP" or for accomplishing coordination as required by Article 6.4 "COORDINATION OF THE WORK," the Owner may carry out such Work and charge the cost thereof to the Contractors responsible therefor as the Owner's Authorized Representative shall determine.

**6.4 COORDINATION OF THE WORK**

- 6.4.1** By entering into this Contract, Contractor acknowledges that there may be separate Contractors on the Site whose work will be coordinated with that of his own. Contractor warrants and guarantees that he will cooperate with separate Contractors, and will do nothing to delay, hinder or interfere with the Work of other separate Contractors, the Owner or the Owner's Authorized Representative.

**END OF ARTICLE 6**

## **ARTICLE 7: MISCELLANEOUS PROVISIONS**

### **7.1 GOVERNING LAW**

**7.1.1** The Contract shall be governed by the law of the Commonwealth of Virginia, and shall be performed in accordance with the laws, ordinances, regulations, permits and resolutions of the Town of Herndon. The sole venue for any litigation under this Contract shall be the Circuit Court of Fairfax County, Virginia. The conflicts of law provisions shall not be employed to apply the laws of any state other than those of the Commonwealth of Virginia to this Contract.

**7.1.2** Each provision of law required to be inserted in this Contract shall be deemed inserted. If through mistake or otherwise, any provision is not properly inserted, the Contract shall be modified to include such provision upon the application of either party.

**7.1.3** Where applicable, the Contractor shall meet or exceed all requirements of the Town of Herndon Critical Structures Manual, and all provisions of the Fairfax County, Virginia Critical Structures Program in addition to all other local, state and federal building codes.

**7.1.4** The Contractor shall comply and the construction shall conform to all applicable and current editions or revisions of the following codes, specifications and standards. In case of conflict, the order of precedence shall be as hereinafter listed:

- .1 Chapter 30-316, Code of Town of Herndon;
- .2 Town of Herndon, Amendments to Building Codes;
- .3 The Virginia Uniform Statewide Building Code, as amended (BOCA and NEC);
- .4 The Department of Environmental Management, Fairfax County, Public Facilities Manual, as adopted by the Town of Herndon;
- .5 Contract Documents;
- .6 Town of Herndon, Water Main Design and Construction Standards, as amended;
- .7 The Virginia Department of Transportation Road and Bridge Specifications and the Road Designs and Standards.

## **7.2 SUCCESSORS AND ASSIGNS**

**7.2.1** The Contractor binds himself, his partners, successors, assigns and legal representatives to the Owner, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or sublet it as a whole without the written consent of the Owner, nor shall the Contractor assign any monies due or to become due to him under the Contract, without the previous written consent of the Owner and the Contractor's Surety. Nor shall any contract be entered into or assigned to any party that is debarred from doing business with or in the Commonwealth of Virginia.

**7.2.2** In the event the Contractor desires to make an assignment of all or part of the contract or any monies due or to become due under this Contract, the Contractor shall file a written consent of Surety, together with a copy of the proposed Assignment with the Owner or the Owner's Authorized Representative. In the event the Contractor assigns all or any part of the monies due or to become due under this Contract, the instrument or assignment shall state that the right of assignees in and to any monies due to or to become due to the Contractor shall be subject to prior liens and claims of all persons, firms and corporations that provided labor, services, or furnished material and equipment during the performance of the work. The rights of assignees shall further be subject to the payment of any liens, claims or amounts due to Federal or State governments, and to all rights of retention and set-off granted to the Owner by the Contract Documents.

## **7.3 CLAIMS FOR DAMAGES**

**7.3.1** Should the Contractor suffer injury or damage to person or property because of any act or omission of the Owner or of any of its employees, agents or others for whose acts either is legally liable, claim shall be made in writing to the Owner within ninety days after the first observance of such injury or damage; otherwise, the Contractor shall have waived any and all rights he may have against the Owner, or its employees, representatives and agents.

## **7.4 DISPUTES**

**7.4.1** A claim, if any, shall be made in writing and submitted by the Contractor to the Owner or his designee within ten calendar days after the occurrence of events giving rise to the claim. A claim is limited to events rising out of or relating to the Contract.

**7.4.2** The Owner or his designee will issue a final decision within thirty days thereafter and mail or otherwise furnish a copy thereof to the Contractor. This

decision shall be final and binding. A failure to issue such a decision shall be deemed to be a denial of the claim.

**7.4.3** Pending the final determination of a Claim submitted to the Owner or his designee or a properly appealed determination of the Owner or his designee to the Circuit Court, the Contractor shall proceed diligently with the performance of the Contract. Any claim submitted to Circuit Court shall be done no later than six months after the Owner's final decision is issued.

**7.4.4** Notwithstanding any other provision hereof, the Contractor expressly waives all claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes losses of financing, business and reputation, bonding capacity, and loss of profit other than profit arising directly from the Work where otherwise permitted in the Contract.

## **7.5 TESTS**

**7.5.1** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the Owner's Authorized Representative five days notice of its readiness so the Owner's Authorized Representative may observe such inspection, testing, or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.

**7.5.2** If the Owner's Authorized Representative determines that any Work requires special inspection, testing, or approval that Article 7.5.1 does not include, the Owner's Authorized Representative will order the Contractor to make arrangements for such special inspection, testing or approval, and the Contractor shall give the Owner's Authorized Representative five days notice of such inspection. If such special inspection or testing reveals a failure of the Work to comply with:

- .1 The requirements of the Contract Documents, or
- .2 The conformance of the Work with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.

The Contractor shall bear all costs of the work, including compensation for the Owner's Authorized Representative and any additional services made necessary by such failure.

**7.5.3** Inspections and tests required under Article 7.5.2 to establish compliance with the Contract Documents will be made by a testing agency employed by the Owner. When the initial tests indicate non-compliance with the Contract

Documents, any subsequent testing occasioned by non-compliance shall be performed by the same agency and the cost thereof shall be borne by the Contractor. Representatives of the testing agency shall have access to the Work at all times. The Contractor shall provide facilities for such access in order that the agency may properly perform its functions.

**7.5.4** Certificates of inspection, testing or approval required by public authorities shall be secured by the Contractor and promptly delivered by him to the Owner's Authorized Representative, in adequate time to avoid delays in the Work or Final Payment.

**7.5.5** The Contractor shall pay for and have sole responsibility for inspection or testing performed exclusively for his own convenience and for tests necessary because of Contractor's or Subcontractor's errors, omission, or noncompliance with Contract Documents.

**7.5.6** All materials and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination and test by the Owner or the Owner's Authorized Representative, at any time during the manufacture or construction and at any place where such manufacture or construction are carried on. Special, full-sized and performance tests shall be described in the specifications. Without additional charge, the Contractor shall furnish promptly all reasonable facilities, labor and materials necessary to make tests safe and convenient.

**7.5.7** It is specifically understood and agreed that an inspection and approval of the materials or work by the Owner or the Owner's Authorized Representative shall not in any way subject the Owner to pay for the said materials or work or any portion thereof, even though incorporated in the work, if said materials or work shall in fact turn out to be not in compliance with the Contract Documents or otherwise defective.

## **7.6 UNENFORCEABILITY OF ANY PROVISION**

**7.6.1** If any provision of this Contract is held as a matter of law to be unenforceable or unconscionable, the remainder of the Contract shall be enforceable without such provision.

## **7.7 AVAILABILITY OF LANDS**

**7.7.1** Owner shall furnish, as indicated in the Contract Documents, the lands upon which the work is to be done, rights-of-way or easements for access thereto. The Owner reserves the right to delay the notice to proceed with the Contract Work in order to secure rights of way, easements or to relocate utilities, such as sewer, water, gas, electricity, cable television and other services.



**END OF ARTICLE 7**

## **ARTICLE 8: TIME**

### **8.1 DEFINITIONS**

**8.1.1** The Contract Time is the period set forth in the Town/Contractor Agreement for Final Completion of the Work as defined in Article 8.1.4, including authorized extensions thereto.

**8.1.2** The date of commencement of the Work is the date established in the Notice to Proceed issued by the Owner.

Submission by the Contractor of all Certificates of Insurance, Performance and Payment Bonds and their approval by the Owner are conditions precedent to the issuance of the Notice to Proceed. Availability of lands under Article 7.7 is also a condition precedent to the issuance of the Notice to Proceed. The Contractor shall not commence the Work or store materials or equipment on site until written Notice to Proceed is issued or until the Contractor otherwise receives the written consent of the Owner.

**8.1.3** The date of Substantial Completion of the Work or designated portion thereof is the date certified by the Owner's Authorized Representative that the Work or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so the Owner can fully occupy or utilize the Work or designated portion thereof for the use for which it is intended, with all of the Project's parts and systems operable as required by the Contract Documents. Only punch list work and any final cleaning beyond that needed for the Owner's full use may remain for Final Completion.

**8.1.4** The date of Final Completion of the Work is the date certified by the Owner's Authorized Representative when the Work is complete, to include punch list work and final clean up, in accordance with the Contract Documents and the Owner may fully occupy or fully utilize the Work for the use for which it is intended.

**8.1.5** If the date or time of completion is included in the Contract, it shall be the Date of Final Completion as defined in Article 8.1.4, including authorized extensions thereto, unless otherwise provided.

**8.1.6** The term Day as used in the Contract Documents shall mean calendar day unless otherwise specifically designated. All dates shall mean midnight of the indicated day unless otherwise stipulated.

## **8.2 PROGRESS AND COMPLETION**

**8.2.1** All time limits stated in the Contract Documents are of the essence of this Contract.

**8.2.2** The Contractor shall prosecute the Work diligently to Final Completion.

## **8.3 DELAYS AND EXTENSIONS OF TIME**

**8.3.1** The time during which the Contractor is delayed in the performance of the Work, by the acts or omissions of the Owner, the Owner's Authorized Representative or their employees or agents, acts of God, unusually severe and abnormal climatic conditions, fires, floods, epidemics, quarantine restrictions, strikes (not to exceed the actual duration of the strike), riots, terrorism, civil commotions, war or freight embargoes, or other conditions beyond the Contractor's control and that the Contractor could not reasonably have foreseen and provided against, shall be added to the Contract Time; provided, however, that no claim by the Contractor for an extension of time for delays will be considered unless made in compliance with the requirements of this Article and other provisions of the Contract Documents.

**8.3.2** The Contract Time shall be adjusted only for Change Orders pursuant to Article 12, "CHANGES IN THE WORK," Article 3.3, "OWNER'S RIGHT TO STOP OR SUSPEND THE WORK," and Article 8.3, "DELAYS AND EXTENSIONS OF TIME." If the Contractor requests an extension of the Contract Time, he shall furnish such justification and supporting evidence as the Owner's Authorized Representative may deem necessary for a determination of whether the Contractor is entitled to an extension of time under the provisions of the Contract.

**8.3.3** The burden of proof to substantiate a claim for an extension of the Contract Time shall rest with the Contractor, including evidence that the cause was beyond his control. The Owner's Authorized Representative shall base his findings of fact and decision on such justification and supporting evidence and shall advise the Contractor in writing thereof.

**8.3.4** The Contractor shall not be entitled to and hereby expressly waives any extension of time resulting from any condition or cause unless the request for an extension of time is made in writing to the Owner's Authorized Representative within seven days of the first instance of delay.

**8.3.5** Any claim for an extension of time for a delay for any cause shall be made by filing a notice of claim with both the Owner and the Owner's Authorized Representative at the beginning of the occurrence or within seven days thereafter if the resulting delay was not reasonably foreseeable. If the asserted cause of delay is weather, such notice shall be given within seven days after the

asserted commencement of the claimed delay. The notice of claim shall be in duplicate, in writing, and shall state the circumstances of the occurrence, the justification for the delay and for the extension of time, and the estimated duration of the delay and of the extension requested. The claim for an extension of time for weather delays shall be further substantiated by weather data collected during the period of delay at the construction site. Said data must demonstrate that an actual departure from normal weather occurred at the work site during the dates in question. Within seven days after the cause of delay has been remedied, the Contractor shall give written notice to the Owner and to the Owner's Authorized Representative of the actual time extension requested as a result of the claimed delay. Failure to file either of the notices as required herein shall constitute an absolute waiver of any claim resulting from a delay of any sort.

- 8.3.6** Any extension of time beyond the date of completion fixed by the Contract shall not be effective unless granted in writing, signed by the Owner.
- 8.3.7** The Contractor shall be entitled to an extension of time for delay which in the opinion of the Owner is entirely beyond the expectation and control of the Contractor by suspension of work pursuant to Article 3, or by strikes, lockouts, fire, insurrection, war, lightning, hurricane, tornado, flood, abnormal and excessive inclement weather as indicated by the local weather records. The Contractor shall be entitled to an extension of time for such causes only for the number of days of delay that the Owner may determine to be due solely to such causes and only to the extent that such occurrences actually delay the completion of the Project. Any request for extension of time shall be accompanied by detailed documentation of which specific schedule activities were affected, when they were affected and for what duration.
- 8.3.8** No extension of time will be granted to the Contractor for delays occurring to parts of the work that have no measurable impact on the completion of the total work under this Contract; nor will extension of time be granted for delays to parts of the work that are not located on the Critical Path as reflected on the approved construction schedule at the time of such delay.
- 8.3.9** Delays in the delivery of equipment or material purchased by the Contractor or his Subcontractors (including Owner-selected equipment), or in the submission of required drawings or specifications by the Contractor's or its Subcontractor's materialmen, manufacturers or dealers, or in the performance of any of the Contractor's Subcontractors or caused by the performance of any of the Contractor's Subcontractors, shall not be considered as a just cause for delay. The Contractor shall be fully responsible for the timely submission, ordering, scheduling, expediting, delivery and installation of all equipment, materials and drawings.

- 8.3.10** Within sixty days after the Contractor files the notice of the actual duration of the extension of time as required herein, the Owner's Authorized Representative shall present his written opinion to the Owner as to whether an extension of time is justified, and, if so, his recommendation as to the number of days for time extension. The Owner will make the final decision on all requests for extension of time. The Owner's written decision shall be presented to the Contractor within one hundred five days from receipt of the Owner's Authorized Representative's recommendation. All such decisions made by the Owner shall be binding and conclusive upon the Contractor.
- 8.3.11** With respect to suspensions of work under Article 3, the Contractor may be entitled to an extension of time if the claim for such extension is submitted in accordance with the requirements of this Article, and if the suspension is not due to any act or omission of the Contractor, any Subcontractor or Sub-subcontractor or any other person or organization for whose acts or omission the Contractor may be liable.
- 8.3.12** An extension of time shall be the sole remedy under this Contract for any reasonable delay caused by any reason or occurrence. The Contractor acknowledges such extension of time to be its sole remedy hereunder, and agrees to make no claim for monetary damages of any sort for delay in the performance of this Contract occasioned by or in any way related to or arising from any act or omission to act of the Owner or the Owner's Authorized Representative or any representatives of the Owner or any representatives of the Owner's Authorized Representative, or because of any injunction which may be brought against the Owner or the Owner's Authorized Representative.
- 8.3.13** The Contractor shall be entitled to additional compensation for the actual, direct costs proximately and foreseeably resulting from unreasonable delay to Final Completion of the Work caused by the Owner or the Owner's Authorized Representative due to causes within their control.
- 8.3.14** As a condition precedent to such additional compensation for unreasonable delay, the Contractor shall satisfy all notice and submission requirements set forth in the Contract Documents for approval of any extension of Contract Time or any change in the Contract Price.
- 8.3.15** If the Contractor asserts an unwarranted claim for additional compensation for unreasonable delay, the Contractor shall be liable to the Owner and shall pay the Owner all costs incurred by the Owner in investigating, analyzing, negotiating, and litigating the claim.

**8.3.16** This Article shall be construed to be included where applicable in every portion of the Contract Documents regardless of whether or not it is specifically referenced therein.

**END OF ARTICLE 8**

## **ARTICLE 9: PAYMENTS AND COMPLETION**

### **9.1 CONTRACT PRICE**

- 9.1.1.** The Contract Price is stated in the Contract and, including authorized adjustments thereto, is the firm, fixed price amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents. The Contract Price includes, but is not limited to, the Contractor's profits and general overhead and all costs and expenses of any nature whatsoever (including without limitation taxes, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, foreseen and unforeseen, incurred by the Contractor on this project. The Contractor agrees to assume all increases in costs of any nature whatsoever that may develop during the performance of the work. The Contract Price includes all applicable Federal, State and local taxes and duties.

### **9.2 SCHEDULE OF VALUES**

- 9.2.1.1** Within ten days after the Notice to Proceed is issued, the Contractor shall submit to the Owner's Authorized Representative a Schedule of Values, allocated to the various portions of the Work including mobilization and demobilization. This schedule, supported by data from the approved Progress Schedule, shall be used as a basis for the Contractor's Applications for Payment upon approval by the Owner's Authorized Representative. The Schedule of Values shall not alter in any way the firm, fixed price or lump sum contract price. The Contractor shall not front-end load his Schedule of Values.
- 9.2.2** If at any time the Contractor expects to receive an amount for a monthly progress payment larger than that indicated by the Schedule of Values and the approved Construction Schedule, the Contractor shall notify the Owner at least thirty days in advance of that payment so that the necessary allocation of funds can be processed. If the Contractor fails to give such notice, the Owner may defer such excess payment to the following progress payment.

### **9.3 APPLICATIONS FOR PAYMENT**

- 9.3.1** The Owner shall make progress payments monthly as the Work proceeds on Applications for Payment approved by the Owner's Authorized Representative. The Owner will retain five percent of the amount of all progress payments until the Work is substantially completed and accepted, whether or not the Owner has occupied any or all of the Project before such time. After fifty percent of the Work has been completed, the Contractor may request the Owner to retain less than five percent of the amount of all progress payments for the Work performed beyond the fifty percent stage of completion. The decision of the Owner concerning reduction of retention shall be final and binding upon the Contractor.

- 9.3.2** Prior to the date for each progress payment established in the Contract, the Contractor, in accordance with any Supplementary Conditions concerning schedules or payments, shall submit to the Owner's Authorized Representative an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Owner's Authorized Representative may require, including but not limited to the Contractor's certification that all work for which payment is requested has been completed in full accordance with the Contract Documents, copies of requisitions from Subcontractors and reflecting retainage, if any, as provided elsewhere in the Contract Documents. The Contractor shall certify that he has paid all due and payable amounts for which previous Certificates for Payment were issued and payments received from the Owner.
- 9.3.3** The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in the construction or upon the receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 9 as "LIENS". The Contractor further warrants that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.
- 9.3.4** Unless otherwise provided in the specifications the Owner will make partial payments to the Contractor on the basis of a duly certified and approved estimate of the work performed during the preceding calendar month as certified by the Owner's Authorized Representative. The Owner's Authorized Representative will schedule a monthly progress meeting to occur no earlier than the 25th day of the month for which the payment request represents or not later than the 5th day of the following month. The Contractor will submit his estimate to the Owner's Authorized Representative at least one work day prior to the date scheduled for the monthly progress meeting. The Owner and/or the Owner's Authorized Representative will review the estimate with the Contractor at the monthly progress meeting and may approve any and all of the estimate of work for payment.
- 9.3.5** The Contractor may, in preparing estimates, take into consideration the material delivered on site and preparatory work done, if properly documented as required by this Contract, or as may be required by the Owner or the Owner's Authorized Representative so that the quantities may be verified.
- 9.3.6** The Contractor may, in preparing estimates, take into consideration material such as large pieces of equipment and items purchased specifically for the project, but stored off the site within the Commonwealth of Virginia, and these



items may be considered for payment by the Owner, provided that all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested:

- .1 The Contractor must notify the Owner in writing at least ten days prior to the submission of the payment request, through the Owner's Authorized Representative, that specific items will be stored off site in a designated secure place within the Commonwealth of Virginia. The Schedule of Values must be detailed to separately indicate both the value of the material and of the labor/installation for trades requesting payment for stored materials. The Contractor warrants by giving such notification and by requesting payment for material stored off-site that the storage location is safe and suitable for the type of material stored and agrees that loss of such material shall not relieve him of the obligation to furnish these types and quantities of materials for the project and on a schedule to meet the time completion requirements of the Contract, subject to Article 8.
- .2 Such notification, as well as the payment request, shall:
  - .a itemize the quantity of such materials, and document with invoices the cost of said materials;
  - .b indicate the identification markings used on the materials. Such markings shall clearly reference the materials to the particular Town of Herndon project;
  - .c State the specific location of the materials. The location must be within reasonable proximity to the job site within the Commonwealth of Virginia;
  - .d State that the Surety on the Performance Bond and the Labor and Material Payment Bond has been notified of the request for payment of materials stored off the site and is agreeable to such payment;
  - .e Certify that adequate all-risk insurance has been obtained by the Contractor on the materials. Such insurance shall be in the name of the Owner and the Contractor.
- .3 The Owner's Authorized Representative shall indicate, in writing, to the Owner that submittals for such materials have been reviewed and meet the requirements of the drawings and specifications of the Contract documents, that the stored materials meet the requirement of the drawings and specifications, and that such material conforms to the approved submittals.

- .4 The Owner, through the Owner's Authorized Representative, shall notify the Contractor in writing of his agreement to prepayment for materials.
- .5 The Contractor shall notify the Owner in writing, through the Owner's Authorized Representative, when the materials are to be transferred to the site and when the materials are received at the site.
- .6 No partial payment shall be made until the appropriate Certificates of Insurance have been provided.
- .7 All material and Work for which partial payments are made shall thereupon become the sole property of the Owner, but this provision shall not relieve the Contractor from the sole responsibility for all materials and Work, including those for which payment has been made, or the restoration of any damaged work or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

#### **9.4 CERTIFICATES FOR PAYMENT**

- 9.4.1** The Owner's Authorized Representative will within five days after receipt of the Contractor's Application for Payment, either approve the Application for Payment for such amount as he determines is properly due, or notify the Contractor in writing of his reasons for not approving the Application for Payment as provided in Article 9.6 "PAYMENTS WITHHELD."
- 9.4.2** The submission and approval of the Progress Schedule and monthly updates thereof, as required by any Supplementary Conditions concerning Schedules, shall be part of the application upon which progress payment shall be made. The Contractor shall be entitled to progress payments only as determined from the currently Approved and Updated Progress Schedule.

#### **9.5 PROGRESS PAYMENTS**

- 9.5.1** After an Application for Payment has been approved by the Owner's Authorized Representative, the Owner shall make payment in the manner and within the time provided in the Contract Documents.
- 9.5.2** The Contractor shall promptly pay each Subcontractor or Supplier providing labor or furnishing material for the Work, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of Subcontractor's work, the amount to which the Subcontractor or supplier is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's or Supplier's work. The Contractor shall, by an

appropriate agreement with each Subcontractor, also require each Subcontractor to make payments to his Subcontractors in similar manner.

**9.5.3** The Owner's Authorized Representative may, on request and at his discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor, and the action taken thereon by the Owner's Authorized Representative on account of Work done by such Subcontractor.

**9.5.4** The Owner has no obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be required by law.

**9.5.5** No Application for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work that is not in accordance with the Contract Documents.

**9.5.6** In the event of disputes, payment shall be mailed on or before the Payment date for amounts and Work not in dispute, subject to any set-offs claimed by the Owner; except in instances where further appropriations are required by the Town Council or where the issuance of further bonds is required, in which case, payment shall be made within thirty days after the effective date of such appropriation or within thirty days after receipt of bond proceeds by the Owner.

## **9.6 PAYMENTS WITHHELD**

**9.6.1** The Owner's Authorized Representative may decline to approve the Application for Payment or reduce payment or because of subsequently discovered evidence or subsequent observations, he may nullify the whole or any part of any Application for Payment previously approved to such extent as may be necessary in his opinion to protect the Owner from loss, because of:

- .1 Defective work not remedied;
- .2 Third party claims filed, whether in court, in arbitration or otherwise, or reasonable evidence indicating probable filing of such claims;
- .3 Failure of the Contractor to make payments properly to Subcontractors;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- .5 Damage to the Owner or to a separate contractor;

- .6 Reasonable evidence that the Work will not be completed within the Contract Time, or within any Contract Milestones as established in the Contract Documents;
- .7 Failure or refusal of the Contractor to carry out the Work in accordance with or to otherwise substantially or materially comply with the Contract Documents;
- .8 Failure or refusal of the Contractor to properly schedule and coordinate the Work, or to provide Progress Schedules, reports and updates; and
- .9 Failure or refusal of the Contractor to fully comply with the provisions of Article 4.13 "DOCUMENTS AND SAMPLES AND OTHER SUBMITTALS AT THE SITE."

**9.6.2** When the above grounds in Article 9.6.1 are removed, payment shall be made for amounts withheld because of them.

## **9.7 SUBSTANTIAL COMPLETION**

**9.7.1** When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Owner's Authorized Representative, is substantially complete as defined in Article 8.1.3, the Contractor shall prepare for submission to the Owner's Authorized Representative a list of items that in his opinion are to be completed or corrected and shall request in writing that the Owner's Authorized Representative perform a Substantial Completion inspection. The Owner's Authorized Representative shall review the Contractor's list and will compile a punch list of items to be corrected and completed. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Owner's Authorized Representative on the basis of an inspection determines that the Work or designated portion thereof is substantially complete, he will then prepare a Certificate of Substantial Completion that will establish the Date of Substantial Completion, state the responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed.

Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be issued to the Contractor for his written acceptance of the responsibilities assigned to him in such Certificate and returned to the Owner's Authorized Representative within five days after issuance

**9.7.2** The Contractor shall have thirty days from the Date of Substantial Completion to complete all items on the punch list to the satisfaction of the Owner's Authorized Representative. The Owner's Authorized Representative shall have the option to correct any and all punch list items not completed by the Contractor within thirty days from the Date of Substantial Completion by utilizing his own forces, those of the Owner, or by a separate Contractor. The cost of such correction of remaining punch list items by the Owner or others shall be deducted from the Final Payment to the Contractor. If the Contractor does not complete all punch list items within the period specified in Article 9.7.2, all warranties and guarantees for such incomplete Punch List items shall become effective upon issuance of Final Payment.

**9.7.3** The issuance of the Certificate of Substantial Completion does not indicate final acceptance of the Project by the Owner, and the Contractor is not relieved of any responsibility for the Project except as specifically stated in the Certificate of Substantial Completion.

**9.7.4** Should the Owner's Authorized Representative determine that the Work or a designated portion thereof is not substantially complete, he shall provide the Contractor a written notice stating why the project or designated portion is not substantially complete. The Contractor shall expeditiously complete the Work and shall request in writing that the Owner's Authorized Representative perform a Substantial Completion reinspection and the costs, if any, associated with such reinspection shall be assessed to the Contractor.

## **9.8 FINAL COMPLETION AND FINAL PAYMENT**

**9.8.1** Upon receipt of the documentation required by Article 9.8.3, and of written notice that the Work is ready for final inspection and acceptance, the Owner's Authorized Representative will promptly make such inspection and, when he finds the Work acceptable under the Contract Documents and the Contract fully performed, he will issue a Certificate of Final Completion to the Contractor. Upon his receipt of the Final Completion Certificate, the Contractor may submit his Application for Final Payment to the Owner's Authorized Representative for his approval. Final Payment shall be made in full to the Contractor within thirty calendar days after the approval by the Owner's Authorized Representative of the Application for Final Payment provided that the requirements of Article 9 have been fulfilled, except for an amount agreed upon for any work remaining uncompleted for which the Owner is entitled a credit under the Contract Documents.

**9.8.2** Should the Owner's Authorized Representative determine that the Work or a designated portion thereof is not complete, he shall provide the Contractor a written notice stating why the Project or designated portion is not complete. The Contractor shall expeditiously complete the Work and shall request in

writing that the Owner's Authorized Representative perform a Final Completion reinspection and the costs, if any, associated with such reinspection shall be assessed to the Contractor.

**9.8.3** Neither the Final Payment nor the remaining retained percentage shall become due until the Work is free and clear of any and all Liens and the Contractor submits to the Owner's Authorized Representative:

- .1 An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible, have been paid or otherwise satisfied;
- .2 Consent of surety to Final Payment, if necessary;
- .3 As-built drawings, operation and maintenance manuals and other project closeout submittals, as required by the Contract Documents;
- .4 A fully executed and notarized Release of claims in such form as may be designated by the Owner; and
- .5 A written certification that:
  - (1) the Contractor has reviewed the requirements of the Contract Documents;
  - (2) the Work has been inspected by the Contractor for compliance with all requirements of the Contract Documents;
  - (3) pursuant to this inspection, the Contractor certifies and represents that the Work complies in all respects with the requirements of the Contract Documents;
  - (4) the Contractor further certifies and represents that all equipment and systems have been installed and tested in accordance with the Contract Documents and the Owner personnel training in the proper operation and maintenance of equipment is complete; and
  - (5) the Contractor provides construction releases as required by the Contract Documents from each property owner on whose property an easement for construction of this project has been obtained by the Owner, such release to be in the forms to be provided by the Owner. This release is for the purpose of releasing the Owner and the Contractor from liability, claims, and damages arising from construction operations on or adjacent to the easement and includes proper restoration of the property

after construction. It shall be the Contractor's sole responsibility to obtain all such releases and furnish them to the Owner.

**9.8.4** The making of Final Payment shall constitute a waiver of all claims by the Owner against the Contractor except those arising from:

- .1 Unsettled liens and claims against the Owner;
- .2 Faulty, defective or non-conforming Work discovered or appearing after Substantial or Final Completion;
- .3 Failure of Work to comply with the requirements of the Contract Documents; and
- .4 Terms of any warranties contained in or required by the Contract Documents.

**9.8.5** The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Final Payment.

## **9.9 PARTIAL OCCUPANCY OR USE**

**9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Article 11.5.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and the Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner's Authorized Representative as provided under Article 9.7. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner's Authorized Representative and the Contractor or, if no agreement is reached, by decision of the Owner's Authorized Representative.

**9.9.2** Immediately prior to such partial occupancy or use, the Owner or the Owner's Authorized Representative, and the Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**END OF ARTICLE 9**



## **ARTICLE 10: PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY PRECAUTIONS AND PROGRAMS**

- 10.1.1** The Owner and the Owner's Authorized Representative are not responsible for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout the Contract performance, until Final Payment is made, and is not limited to regular working hours.

### **10.2 SAFETY OF PERSONS AND PROPERTY**

- 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss, to:

- .1 All employees on the Work and other persons who may be affected thereby;
- .2 All the Work and materials and equipment to be incorporated therein whether in storage off the site, under the care, custody or control of the Contractor or any of his Subcontractors, machinery and equipment. All hazards shall be guarded or eliminated in accordance with all applicable safety regulations; including the Manual of Accident Prevention in Construction published by the Associated General Contractors of America.
- .3 Other property at or adjacent to the Work, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

- 10.2.2** The Contractor shall give all notices and comply with applicable laws, ordinances, permits, rules, regulations and orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss.

- 10.2.2.1** The Contractor shall at all times safely guard the Owner's property from injury or losses in connection with this Contract. He shall at all times safely guard and protect his own work and adjacent property as provided by law and the Contract Documents from damage. All security personnel, passageways, guard fences, lights, and other facilities required for protection of the property and the Work described herein shall be provided and maintained at the Contractor's expense.

- 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.
- 10.2.4** When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.
- 10.2.5** The Contractor shall promptly remedy at his own cost and expense all damage or loss to any property referred to in Articles 10.2.1.2 and 10.2.1.3. The Contractor shall perform such restoration by underpinning, repainting, rebuilding, replanting, or otherwise restoring as may be required or directed by the Owner's Authorized Representative or shall make good such damage in a satisfactory and acceptable manner. In case of failure on the part of the Contractor to promptly restore such property or make good such damage, the Owner may, upon two days written notice, proceed to repair, rebuild or otherwise restore such property as may be necessary, and the cost thereof will be deducted from any monies due or to become due to the Contractor under the Contract.
- 10.2.6** The Contractor shall give notice in writing at least 48 hours before breaking ground, to the Owner, all persons, Public Utility Companies, superintendents, inspectors or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by the Contractor's operation, in order that they may remove any obstruction for which they are responsible and have a representative on site to see that their property is properly protected. The Contractor is responsible for any damages or claims resulting from any excavation and shall defend, fully indemnify, and hold harmless the Owner from all actions resulting from such work regardless of whether the Contractor gave proper notice under this clause.
- 10.2.7** The Contractor shall protect all utilities encountered while performing its work, whether indicated on the Contract Documents or not. The Contractor shall maintain utilities in service until moved or abandoned. The Contractor shall exercise due care when excavating around utilities and shall restore any damaged utilities to the same condition or better as existed prior to starting the Work, at no cost to the Owner. The Contractor shall maintain operating utilities or other services, even if they are shown to be abandoned on the Contract Drawings, in service until new facilities are provided, tested and ready for use.
- 10.2.8** The Contractor shall return all improvements on or about the site and adjacent property that are not shown to be altered, removed or otherwise changed to conditions that existed prior to starting work.

- 10.2.9** The Contractor shall protect the Work, including but not limited to, the site, stored materials and equipment, excavations, and excavated or stockpiled soil or other material, intended for use in the Work, and shall take all necessary precautions to prevent or minimize damage to same or detrimental effect upon his performance or that of his subcontractors, caused by or due to rain, run-off, floods, temperature, wind, dust, sand, and flying debris. For example, but not by way of limitation, Contractor shall, when necessary, utilize temporary dikes, channels or pumping to carry-off, divert or drain water, and as necessary tie-down or otherwise secure the Work and employ appropriate covers and screens.
- 10.2.10** The Contractor shall be responsible for the prevention of accidents and the protection of material, equipment and property.
- 10.2.11** The Contractor shall not load or permit any part of the Work to be loaded so as to endanger the safety of the Work, persons or adjacent property.
- 10.2.12** The Contractor has sole and complete responsibility for the correction of any safety violation and sole liability for the consequences of the violation. The Contractor shall give prompt written notice of any safety violation to the Owner's Authorized Representative.

### **10.3 EMERGENCIES**

- 10.3.1** In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss to the Owner. The Contractor shall notify the Owner's Authorized Representative of the situation and all actions taken immediately thereafter. If, in the opinion of the Contractor, immediate action is not required, the Contractor shall notify the Owner's Authorized Representative of the emergency situation and take necessary steps. If any loss, damage, injury or death occurs that could have been prevented by the Contractor's prompt and immediate action or the emergency resulted from acts or omissions of the Contractor or his Subcontractors, or anyone directly or indirectly employed by any of them, or by anyone whose acts any of them may be liable, the Contractor shall defend, fully indemnify and hold harmless the Owner (including attorneys' fees) from all actions resulting from the emergency. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided in Article 12 "CHANGES IN THE WORK."
- 10.3.2** Prior to commencing his work and at all times during the performance of the Work, the Contractor shall provide the Owner with two, 24-hour emergency phone numbers where his representatives can be contacted.

### **END OF ARTICLE 10**

## **ARTICLE 11: BONDS AND INSURANCE**

### **11.1 BONDS**

- 11.1.1** The Contractor shall furnish to the Owner a performance bond in the sum of the contract price executed by a surety authorized to do business in Virginia, payable to the Town of Herndon, Virginia, or such other entity as may be identified in the Contract, and conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the Contract Documents.
- 11.1.2** The Contractor shall furnish to the Owner a payment bond in the amount of the contract price payable to the Town of Herndon or such other entity as may be identified in the Contract, and executed by a surety authorized to do business in Virginia. Such bond shall be conditioned on the prompt payment to all claimants who have and fulfill contracts to supply labor or materials to the Contractor for all material furnished or labor supplied or performed in the prosecution of the Work. "Labor and materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the project site.
- 11.1.3** If the amount of all Work subcontracted to any one Subcontractor is in excess of \$10,000, the Contractor may at his option require the Subcontractor to furnish a Labor and Material Payment Bond with surety thereon, in the amount of fifty percent of the amount of the Subcontract.
- 11.1.4** The Contractor shall ensure that all sureties providing bonds for the Project will give written notice to the Owner, at least thirty days prior to expiration or termination of the bond(s).
- 11.1.5** If the surety on any Bond furnished by the Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, the Contractor shall within five days thereafter substitute another Bond and surety, both of which shall be acceptable to the Owner.
- 11.1.6** If at any time, the Owner shall be or become dissatisfied with any surety or sureties then upon the Performance and Labor and Materials Payment Bonds, or if for any other reason, such bond shall cease to be adequate security to the Owner, the Contractor shall within five days after notice from the Owner to do so, substitute an acceptable bond(s) in such form and sum and signed by such other sureties as may be satisfactory to the Owner. The premium on such bond(s) shall be paid by the Contractor. No further payment shall be deemed due nor shall be made until the new sureties have been qualified and accepted by the Owner.

**11.1.7** If more than one surety executes a bond, each shall be jointly and severally liable to the Owner for the entire amount of the bond.

**11.2 CONTRACTOR'S LIABILITY INSURANCE**

**11.2.1** INSURANCE – Whenever any work and/or services are provided, either in or on Town owned property, the following shall apply:

**11.2.2** The Contractor shall provide the Procurement Official with a Commonwealth of Virginia Certificate of Insurance PRIOR to the commencement of any work under the Contract and agrees to maintain such insurance until the completion of the Contract. The minimum limits of liability shall be:

- a. The contractor will maintain workers' compensation coverage in compliance with the laws of the Commonwealth of Virginia. The coverage must have statutory limits and be with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. 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 employers' 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.
- b. The contractor will maintain a general liability policy with \$2,000,000 combined single limits. Coverage is to be on an occurrence basis with an insurer licensed to conduct business in the Commonwealth of Virginia. The insurer must have an A. M. Best rating of A- or better. The insurer must list the Town of Herndon as an additional insured. The endorsement must be issued by the insurance company. A notation on the certificate of insurance is not sufficient. If the vendor sells alcohol, \$5 million will be required.

Broad Form Comprehensive General Liability--\$2,000,000 per occurrence coverage to include:

Premises-Operations; Products/Completed Operations; Contractual; Independent Contractors; Owners and Contractors Protective; Personal Injury (Libel, Slander, Defamation of Character, etc.);

Automotive Liability--\$1,000,000.00 per occurrence

- c. The Town reserves the right to require higher limits on any Contracts provided notice of such requirement is stated in the solicitation. The Town is to be named as an additional or co-insured. A thirty- (30) day written notice of cancellation or non-renewal shall be furnished by certified mail to the Procurement Official at the address indicated on the solicitation.
- d. Contractor's signature of the solicitation constitutes his/her certification that, if awarded the Contract, he/she shall obtain the required coverage as specified above and proof of coverage as contained herein shall be submitted within ten (10) calendar days after notice of award. The Contractor's signature also signifies that this coverage shall be maintained for the duration of the Contract. "Claims made" policies must be in force or that coverage purchased for three (3) years after Contract completion date.

**11.2.3** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the Commonwealth of Virginia such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property including loss of use resulting therefrom;

- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations; and
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Article 4.22.

- 11.2.4** The insurance required by Article 11.2.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.
- 11.2.5** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by Article 11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty days prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Article 9.8. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.
- 11.2.6** The Asbestos Contractor or Subcontractor shall provide occurrence basis liability insurance with asbestos coverages in an amount not less than \$2 million and shall name the following as additional insureds: The Town of Herndon, its officers, employees and agents; and the Owner's Authorized Representative.
- 11.2.7** Neither the Owner or the Owner's Authorized Representative shall have any obligation to review any Certificates of Insurance provided by the Contractor or to check or verify the Contractor's compliance with any and all requirements regarding insurance imposed by the Contract. The Contractor is fully liable for the amounts and types of insurance required herein and is not excused should any policy or Certificate of Insurance provided by the Contractor not comply with the Contract's insurance requirements.
- 11.2.8** If the Contractor fails to comply with the Contract's insurance requirements, the Owner shall be entitled to recover all amounts payable as a matter of law to

the Owner or any other parties, including but not limited to the Owner's Authorized Representative, had the insurance coverage been in effect. Any recovery shall include but is not limited to interest for the loss of the use of such amounts of money, attorneys' fees, costs and expenses incurred in securing such determination and any other consequential damages.

### **11.3 OWNER'S LIABILITY INSURANCE**

**11.3.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

### **11.4 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE**

**11.4.1** Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability Insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Owner's Authorized Representative's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability coverage purchased shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Articles 11.2.3.2 through 11.2.3.5.

**11.4.2** To the extent damages are covered by Project Management Protective Liability Insurance, the Owner, Contractor and Owner's Authorized Representative waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

**11.4.3** If Project Management Protective Liability insurance is required, then the Owner shall not require the Contractor to include the Owner, the Owner's Authorized Representative or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Article 11.2.

### **11.5 PROPERTY INSURANCE**

**11.5.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or



otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Article 9.8 or until no person or entity other than the Owner has an insurable interest in the property required by this Article 11.5 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

- 11.5.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's Authorized Representative's and Contractor's services and expenses required as a result of such insured loss.
- 11.5.1.2** If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.
- 11.5.1.3** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.
- 11.5.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.
- 11.5.1.5** Partial occupancy or use in accordance with Article 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.
- 11.5.2** **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the

Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

- 11.5.3 Loss of Use Insurance.** The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.
- 11.5.4** If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.
- 11.5.5** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Article 11.5.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.
- 11.5.6** Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Article 11.5. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty days prior written notice has been given to the Contractor.
- 11.5.7 Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of the subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner's Authorized Representative or his consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Article 11.5 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Owner's Authorized Representative or his consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate

agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

- 11.5.8** A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Article 11.5.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.
- 11.5.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 12.
- 11.5.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Article 7.4. The Owner as fiduciary shall, in the case of disputes, make settlement with insurers in accordance with orders of the Court.

## **END OF ARTICLE 11**

## **ARTICLE 12: CHANGES IN THE WORK**

### **12.1 CHANGES IN THE WORK**

**12.1.1** The Owner, without invalidating the Contract and without notice to the surety, may order a Change in the Work consisting of additions, deletions, modifications or other revisions to the general scope of the Contract, or changes in the sequence of the performance of the Work. The Contract Price and the Contract Time shall be adjusted accordingly. All such Changes in the Work shall be authorized by written Change Order, and all Work involved in a Change shall be performed in accordance with the terms and conditions of this Contract. If the Contractor should proceed with a Change in the Work upon an oral order, by whomever given, it shall constitute a waiver by the Contractor of any claim for an increase in the Contract Price or Contract Time, on account thereof. No change will be made which will increase the total contract price to an amount more than 20 percent in excess of the original contract price without notice to the sureties.

**12.1.2** When the Owner and the Contractor have agreed upon a Change in the Work, but a written Change Order Document has not yet been executed, the Owner may, at its sole discretion and option, direct in writing the Contractor to proceed with the Change in the Work pending the execution of the formal Change Order. Contractor shall proceed in accordance with such direction.

**12.1.3** No modifications may be made which will result in an increase of the original contract price by more than 20 percent of the amount of the contract, or \$30,000.00, whichever is less, without the advance written approval of the town council. The Contractor shall not begin work on any alteration requiring a modification until such modification has been executed by the Town and the Contractor. If a satisfactory agreement cannot be agreed to for any item requiring a modification, the Town of Herndon reserves the right to terminate the contract as it applies to the items in question and make such arrangements as may be deemed necessary to complete the work.

### **12.2 FIELD ORDER**

**12.2.1** A Field Order is a written order to the Contractor signed by the Owner or the Owner's Authorized Representative interpreting or clarifying the Contract Documents or directing the Contractor to perform minor changes in the Work. Any work relating to the issuance of a Field Order shall be performed promptly and expeditiously and without additional cost to the Owner and within the Contract Time, unless the Contractor submits a Proposed Change Order, defined below, which is approved by the Owner. Field Orders shall be numbered consecutively by date of issuance by the Owner or the Owner's Authorized Representative.

## **12.3 REQUEST FOR PROPOSAL**

- 12.3.1** A Request For Proposal (“RFP”) describes a proposed Change in the Work. In response to a Request for Proposal issued by the Owner or the Owner’s Authorized Representative, the Contractor is required to submit a complete Proposal for the total cost and additional time, if any, necessary to perform the proposed Change in the Work. Requests For Proposals shall be numbered consecutively by date of issuance by the Owner or the Owner's Authorized Representative.
- 12.3.2** The Contractor’s Proposal in response to an RFP shall be in the form prescribed by the Owner's Authorized Representative, including all appropriate back-up material.

## **12.4 PROPOSED CHANGE ORDER**

- 12.4.1** A Proposed Change Order is a written request from the Contractor to the Owner requesting a change in the Contract Price and/or Contract Time. A Proposed Change Order may be submitted as a proposal in response to a Request For Proposal issued by the Owner or as a claim for an increase in the Contract Price and/or Contract Time pursuant to the issuance of a Field Order. A Proposed Change Order must be submitted within twenty days of the issuance of a Request For Proposal or a Field Order. Proposed Change Orders shall be numbered consecutively by date of issuance by the Contractor. The Contractor shall also indicate on the Proposed Change Order the number of the Request For Proposal or the Field Order to which it responds.
- 12.4.2** The portion of the proposal relating to labor, whether by the Contractor's forces or the forces of any of his Subcontractors, may include reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including premium costs of overtime labor, if overtime is authorized, Social Security, Federal or State unemployment insurance taxes and fringe benefits required by collective bargaining agreements entered into by the Contractor or any such Subcontractor in connection with such labor).
- 12.4.3** The portion of the proposal relating to materials may include the reasonably anticipated direct costs to the Contractor or to any of his Subcontractors of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales or use taxes.
- 12.4.4** The proposal may further include the Contractor's and any of his Subcontractor's reasonably anticipated equipment rental costs, except small hand tools, in connection with the Change in the Work. For rented equipment an hourly rental rate will be used which will be determined by using the monthly rental rates taken from the current edition of the Rental Rate Blue Book for

Construction Equipment and dividing it by 176. An allowance will be made for operating costs for each and every hour the equipment is actually operating in accordance with the rates listed in the Rental Book. The Contractor will be allowed only sixty-five percent of the rental rate on Contractor owned equipment after adjustments for standby, age, region, and the like, as applicable.

**12.4.5** Base Cost is defined as the total of labor, material and equipment rentals as described in subparagraphs 12.4.3, 12.4.4 and 12.4.5. The actual net cost to the Owner for the Change in the Work shall be computed as follows:

- .1 If the Contractor performs the Change in the Work, his compensation will be the Base Costs as described above, plus (1) a mark-up of fifteen percent or \$2,000, whichever is greater, on Base Costs greater than \$10,000, or (2) a mark-up of twenty percent on Base Costs less or equal to \$10,000, for overhead and profit. If the Contractor's customary mark-up is less than the mark-up allowed by 12.4.5.1 those rates shall apply for overhead and profit.
- .2 If the work is performed by a bona fide Subcontractor, his compensation will be the Base Costs as described above plus a mark-up as described in Article 12.4.5.1 for overhead and profit. The Contractor's compensation will be a mark-up of ten percent of the Subcontractor's Base Costs for his overhead.
- .3 If the work is performed by a bona fide Sub-subcontractor, his compensation will be the Base Costs as herein described plus a mark-up as described in Article 12.4.5.1 for overhead and profit. The Subcontractor's compensation will be a mark-up of ten percent of the Sub-subcontractor's Base Costs for his overhead. The Contractor's compensation will be a mark-up of ten percent of the Sub-subcontractor Base Costs for his overhead.

**12.4.6** The mark-up on the cost of labor, materials, and equipment described in Article 12.4.5 shall compensate the Contractor, Subcontractor or Sub-subcontractor for all indirect costs associated with or relating to the Change in the Work including, but not limited to, gross receipts tax, superintendent, small tools, reproduction, administration, insurance, unrelated safety requirements, temporary structures and offices, all other general and administrative, home office and field office expenses.

**12.4.7** The mark-up on the cost of labor, materials, and equipment described in Articles 12.4.5.2 and 12.4.5.3 shall compensate the Contractor or Subcontractor for all indirect costs associated with or relating to the Change in the Work including but not limited to, gross receipt tax, superintendent, reproduction, administration, insurance and bonds.

**12.4.8** If it is necessary in this subparagraph to increase the Contract Time to perform the Change in the Work, the Contractor shall provide an estimate of the increase in the Contract Time which shall be negotiated by the parties to the Contract. The Contractor's request for a time extension shall be evaluated in accordance with the criteria described in Article 8.

**12.4.9** If the Contractor's Proposed Change Order is rejected by the Owner as being within the scope of the Work required by the Contract Documents the Owner may, at its sole option and discretion, direct the Contractor to perform the Work which is the subject of the Proposed Change Order; the Contractor shall then promptly proceed with the Work. Nothing shall excuse the timely performance by the Contractor of the Work because any Proposed Change Order is pending.

## **12.5 CHANGE ORDER**

**12.5.1** A Change Order is a written order to the Contractor signed by the Owner and the Owner's Authorized Representative, issued after execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Price and/or the Contract Time. The Contract Price and the Contract Time may be changed only by Change Order. A Change Order signed by the Contractor indicates his agreement therein, including the adjustment in the Contract Price and/or the Contract Time. Change Orders shall be numbered consecutively by date of issuance by the Owner or the Owner's Authorized Representative and shall, if applicable, indicate the number of the Field Order(s), Request For Proposal(s) and/or Proposed Change Order(s) to which it relates.

**12.5.1.1** If the Owner and the Owner's Authorized Representative determine that the Contractor's Proposed Change Order, submitted pursuant to Article 12.4 for a change in the Contract Price or Contract Time, is acceptable, the Owner's Authorized Representative shall prepare and issue, or cause to be prepared and issued, a Change Order which will authorize the Contractor to proceed with the Change in the Work for the cost and time stated in the Proposed Change Order, or as otherwise may be agreed upon by the parties. The amounts stated in the Change Order for the cost and time to perform the Change in the Work shall be binding on the parties.

**12.5.2** After issuance of the Change Order, the Contractor shall ensure that the amount of the Performance and Payment Bond coverage has been revised to reflect the increase in the Contract Price due to the Change Order.

**12.5.3** If the Contractor's Proposed Change Order is not acceptable to the Owner and the Owner's Authorized Representative or if the parties are unable to otherwise agree as to the cost and time necessary to perform the Change in the Work, the Owner may, at its sole option and discretion, direct the Contractor to perform

the Work on a time and material basis. The Contractor shall then promptly proceed with the Work.

- 12.5.4** If the Owner and the Owner's Authorized Representative elect to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of his Subcontractors or Sub-subcontractor's, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendent of any nature whatsoever, or the cost, use or rental of tools or plant). The percent mark-ups for the Contractor, Subcontractors and Sub-subcontractors shall be as described in Articles 12.4.5.1, 12.4.5.2 and 12.4.5.3.
- 12.5.4.1** Prior to starting the work on a time and material basis, the Contractor shall notify the Owner's Authorized Representative in writing as to what labor, materials, equipment or rentals are to be used for the Change in the Work. During the performance of the Change, the Contractor shall submit to the Owner daily time and material tickets, which shall list the categories and amounts of labor and equipment for which Change Order compensation is to be charged for the previous work day. Such tickets shall specifically include the following information: location and description of the Change in the Work, the classification of labor employed, including names and social security numbers of laborers, labor trades used, manhours, wage rates, insurance, taxes and fringe benefits, equipment and materials suppliers' quotations with detailed break-out and pricing, rental equipment hours and rates, and materials quantities and unit prices and such other evidence of cost as the Owner may require.
- 12.5.4.2** The Contractor shall commence submission of daily time and material tickets immediately upon commencement of the Change Order Work and continue to submit them until completion of the Change Order Work. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose.
- 12.5.4.3** The failure of the Contractor to provide any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.
- 12.5.4.4** The Contractor shall submit his complete submission of the reasonable actual cost and time to perform the Change in the Work within twenty days of the request of the Owner's Authorized Representative to do so. The Owner and the Owner's Authorized Representative shall review the costs and time submitted by the Contractor on the basis of reasonable expenditures and savings of those



performing the Change in the Work. If such costs and time are acceptable to the Owner and the Owner's Authorized Representative, or if the parties otherwise agree to the actual reasonable cost to perform the Change in the Work, the Owner's Authorized Representative shall issue a Change Order for the cost and time agreed upon. The amounts stated in the Change Order for the cost and time to perform the Change in the Work shall be binding upon the parties.

**12.5.5** The Contractor shall be entitled to costs as provided for in Article 12.4 which the Contractor, or his Subcontractors, may incur as a result of delays, interferences, suspensions, changes in sequence or the like, which are unreasonable, arising from the performance of any and all changes in the Work, caused by acts or omissions of the Owner, performed pursuant to this Article 12.

**12.5.6** If any dispute should arise between the parties with respect to an increase or decrease in the Contract Price or an extension or reduction in the Contract Time or as a result of a Change in the Work, the Contractor shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by the Owner's Authorized Representative in writing. Disputes must be resolved pursuant to Article 7.4 of the Contract. The Owner will, however, pay the Contractor up to the Owner's Authorized Representative's estimated value of the Change in the Work, regardless of the dispute, if the Change in the Work results in an increase in the Contract Price; and the Owner will have the right to decrease the Contract Price up to the Owner's Authorized Representative's estimated value of the Change in the Work, regardless of the dispute, if the Change in the Work results in a decrease in the Contract Price.

## **12.6 UNILATERAL CHANGE ORDER**

**12.6.1** In the event that the parties are unable to agree as to the reasonable cost and time to perform the Change in the Work and the Owner does not elect to have the Change in the Work performed on a time and material basis, the Owner and the Owner's Authorized Representative shall 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. A Change Order shall be issued for the amounts of cost and time determined by the Owner and the Owner's Authorized Representative and shall become binding upon the Contractor unless the Contractor submits his protest in writing to the Owner within ten days of the issuance of the Change Order. The procedure for the resolution of the Contractor's protest shall be as described in Article 12.10. The Owner has the right to direct in writing the Contractor to perform the Change in the Work, which is the subject of such Unilateral Change Order. Failure of the parties to reach an agreement regarding the cost and time of performing the Change in the Work, or any pending protest, shall not relieve

the Contractor from performing the Change in the Work promptly and expeditiously.

## **12.7 DECREASES AND WORK NOT PERFORMED**

**12.7.1** Should it be deemed expedient by the Owner or the Owner's Authorized Representative at any time that the Contract Work is in progress to decrease the dimensions, quantity of material or work, or vary in any other way the work herein contracted for, the Owner or the Owner's Authorized Representative shall have the full power to do so, and shall order, in writing, such decreases to be made or performed without affecting the enforcement of the Contract. The Contractor shall, in pursuance of such written orders and directions from the Owner or the Owner's Authorized Representative, execute the work ordered, and the difference in expense occasioned by such decrease so ordered shall be deducted from the amount payable under this Contract.

**12.7.2** If work is not performed, and such deletion of work is not approved by the Owner, the Owner's Authorized Representative shall ascertain the amount of the credit due the Owner, based on the reasonable value of the labor and materials so deleted, for the lesser amount of materials and labor required.

**12.7.3** If work is deleted from the Contract by Change Order, the amounts to be credited to the Owner shall reflect the same current pricing as if the work were being added to the Contract at the time the deletion is ordered, and documentation will be required for a credit as specified in Article 12.4.5. If such deleted materials and equipment shall have already been purchased and stored on site and cannot be used in other projects or returned for credit or cannot be returned for credit at the price paid by the Contractor at the time of purchase, the Contractor shall be entitled, upon proper documentation and certification, to an adjustment in the pricing of the credit to avoid hardship to the Contractor. If necessary in order to establish such reasonable value, the Contractor may be required to submit a detailed breakdown of his original bid for the items or work involved.

## **12.8 CHANGES IN LINE AND GRADE**

**12.8.1** The Owner reserves the right through the Owner's Authorized Representative to make such alterations in the line and grade of various structures or pipelines shown on the drawings, as may be necessitated by conditions found during construction or that in the judgment of the Owner's Authorized Representative appears advisable. The Contractor shall not claim forfeiture of Contract by reason of such changes by the Owner's Authorized Representative.

**12.8.2** In case of a fixed price contract, the price of the work shall be negotiated as herein provided. If such alterations or changes diminish the quantity of work to be done, they shall not constitute a claim for damages or for loss of anticipated profits in the work which may be dispensed with, and the work as

constructed shall be paid for in accordance with the Contract prices as established for such work under this Contract.

**12.8.3** The Contractor shall employ a certified Land Surveyor to establish a base line and set benchmarks for the Contractor's use as necessary to stake the basic layout of the work. Where new construction connects to existing facilities, it shall be the responsibility of the Contractor to check and establish the location of all existing facilities prior to construction of the new facilities.

**12.8.4** All stakes, benchmarks, and other base line information provided by the Owner or the Owner's Authorized Representative shall be carefully preserved by the Contractor, and in case of their removal by any cause without prior written consent from the Owner, such stakes, bench marks, and other base line information will be replaced by the Contractor at the Contractor's sole expense.

**12.8.5** The dimensions for lines and elevations for grades of the structures, appurtenances, and utilities are indicated on the Drawings, together with pertinent information required for laying out the work. If site conditions vary from those indicated, the Contractor shall notify the Owner immediately, who will promptly direct any adjustment as required.

**12.8.6** Contractor shall notify the Owner immediately upon discovery of any apparent errors in the lines or grades. If Contractor proceeds with knowledge of such apparent error without first receiving written clarification from the Owner's Authorized Representative, the Contractor does so at his own risk.

## **12.9 DIFFERING SITE CONDITION**

**12.9.1** The Contractor shall promptly, and before the conditions are disturbed, give written notice to the Owner's Authorized Representative of (a) subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents, or (b) unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract and which were not reasonably anticipated as a result of the investigation required by Article 1.2.2.

**12.9.2** The Owner's Authorized Representative shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the cost or time of performance, the provisions of Article 12 "Changes in the Work" shall apply.

**12.9.3** No request by the Contractor for a Change Order under this Article shall be allowed, unless the Contractor has given the required written notice.

**12.9.4** No request by the Contractor for a Change Order under this Article shall be allowed if made after final payment under the Contract.

## **12.10 CLAIMS FOR ADDITIONAL COST AND/OR TIME**

**12.10.1** If the Contractor wishes to make a claim for an increase in the Contract Price and/or Contract Time, he shall give the Owner written notice thereof within ten calendar days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed as provided in Article 10. No claim shall be allowed and no amounts shall be paid for any costs incurred more than twenty days prior to the time notice is given to the Owner. Any change in the Contract Price or Contract Time resulting from such claim must be authorized by Change Order. The Contractor's complete claim submittal for an increase in the Contract Price shall be submitted no later than twenty calendar days after the work for which the claim is made has been completed or after the request of the Owner or the Owner's Authorized Representative, whichever is earlier.

**12.10.2** If the Contractor claims that additional cost or time is involved because of, but not limited to, any of the following circumstances, the Contractor shall make such claim as provided in Subparagraph 12.10.1: (1) any written interpretation pursuant to Article 2, (2) any order by the Owner to stop the Work pursuant to Article 3.3 where the Contractor was not at fault, (3) failure of payment by the Owner pursuant to Article 9, or (4) any written order for a minor change in the Work issued pursuant to Article 12.8.1.

## **12.11 ATTORNEYS' FEES AND OTHER EXPENSES**

**12.11.1** In recognition of the public monies being administered by the Owner to fund this Contract, the Contractor agrees that he will not submit, assert, litigate or otherwise pursue any frivolous or unsubstantiated delay claims. If the Contractor's delay claim, or any separate item of a delay claim, is determined through litigation or other dispute resolution process to be false or to have no basis in law or fact, the Contractor shall be liable to the Owner and shall pay it for all Investigation Costs incurred by the Owner. These costs include investigating, analyzing, negotiating, appealing, defending, and litigating the false or baseless delay claims, attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional architect/engineer expenses and any other consultant costs. The amount to be paid hereunder to the Owner shall be the percentage of the Owner's total Investigation Costs in an amount equal to the percentage of the Contractor's total delay claim which is determined to be false or to have no basis in fact.

**12.11.2** If the Contractor breaches any obligation under the Contract Documents, the Contractor shall reimburse the Owner for all costs and expenses incurred by the Owner relating to such breach, including but not limited to, attorneys' fees,

audit costs, accountants' fees, expert witness' fees, additional architectural or engineering expenses, and any other consultant costs.

- 12.11.3** If the Owner prevails in a claim brought against the Contractor, including but not limited to, claims for fraud or misrepresentation, overpayment, defective work, delay damages, and recovery of termination expenses, the Contractor shall reimburse the Owner for all costs and expenses incurred by the Owner relating to such claim, including but not limited to, attorneys' fees, audit costs, accountants' fees, expert witness' fees, additional architect or engineering expenses, and any other consultant costs.

**END OF ARTICLE 12**

## **ARTICLE 13: UNCOVERING AND CORRECTION OF WORK**

### **13.1 UNCOVERING OF WORK**

**13.1.1** If any portion of the Work should be covered contrary to the request of the Owner's Authorized Representative or to requirements specifically expressed in the Contract Documents or to requirements of applicable Construction Permits, it must, if required in writing by the Owner's Authorized Representative, be uncovered for its observation and shall be replaced at the Contractor's expense.

**13.1.2** If any portion of the Work has been covered that the Owner's Authorized Representative has not specifically requested to observe prior to being covered, the Owner's Authorized Representative may request to see such Work and it shall be uncovered by the Contractor. If such Work complies with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work does not comply with the Contract Documents, the Contractor shall pay such costs unless the Owner caused this condition, in which event the Owner shall pay such costs.

### **13.2 CORRECTION OF WORK**

**13.2.1** The Contractor shall promptly reconstruct, replace or correct all work rejected by the Owner's Authorized Representative as defective or as failing to conform to the Contract Documents or as not in accordance with the guarantees and warranties specified in the Contract Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Owner's Authorized Representative and any other additional services made necessary thereby.

**13.2.2** The Contractor, unless removal is waived by the Owner, shall remove from the site all portions of the Work that are defective or non-conforming, or if permitted or required, he shall correct such Work in place at his own expense promptly after receipt of notice, and such rejected Work shall not thereafter be tendered for acceptance unless the former rejection or requirement for correction is disclosed.

**13.2.3** If the Contractor does not proceed with the correction of such defective or non-conforming Work within a reasonable time fixed by written notice from the Owner's Authorized Representative, the Owner may either:

- .1 By separate contract or otherwise replace or correct such Work and charge the Contractor the cost occasioned the Owner thereby and remove and store the materials or equipment at the expense of the Contractor; or

.2 Terminate this Contract as provided in Article 14.3 "DEFAULT TERMINATION."

**13.2.4** The Contractor shall bear the cost of making good all work of the Owner or separate Contractors destroyed or damaged by such correction or removal.

**13.2.5** Nothing contained in this Article 13.2 shall be construed to establish a period of limitation with respect to any other obligation that the Contractor might have under the Contract Documents, including Article 4.7 "WARRANTY" hereof. The establishment of the period of one year after the Date of Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which his obligation to comply with the Contract Documents may be sought to be enforced, or to the time within which proceedings may be commenced to establish the Contractor's liability with respect to his obligations other than specifically to correct the Work.

### **13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK**

**13.3.1** If the Owner's Authorized Representative prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction. In this case, a Change Order will be issued to reflect a reduction in the Contract Price where appropriate and equitable, or the Owner may elect to accept payment in materials or services, in lieu of a reduction in the Contract Price. If the amount of a reduction is determined after Final Payment, it shall be paid on demand to the Owner by the Contractor.

### **END OF ARTICLE 13**

## **ARTICLE 14: TERMINATION OF THE CONTRACT**

### **14.1 TERMINATION FOR THE CONVENIENCE OF THE OWNER**

**14.1.1** The Owner may, at any time upon ten days written notice to the Contractor, terminate, without prejudice to any right or remedy of the Owner, the whole or any portion of the Work for the convenience of the Owner. This Notice of Termination shall specify that portion of the Work to be terminated and the effective date of termination. The Contractor's sole remedy, in the event of such termination, will be the allowable termination costs permitted by Article 14.2 "ALLOWABLE CONVENIENCE TERMINATION COSTS."

**14.1.2** The Contractor shall include termination clauses identical to Article 14 in all subcontracts and purchase orders related to the Work. Failure to include these termination clauses in any subcontracts or purchase orders shall preclude recovery of any termination costs related to that subcontract or purchase order.

### **14.2 ALLOWABLE CONVENIENCE TERMINATION COSTS**

**14.2.1** After complying with the provisions of Article 14.4, the Contractor may submit a termination claim, not later than six months after the effective date of its termination, unless one or more extensions of three months each are granted by the Owner in response to the Contractor's written request.

**14.2.2** The Owner shall pay the Contractor's reasonable costs of termination, plus a mark-up of ten percent for profit and overhead. This amount will not exceed the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered, or the service not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

**14.2.3** If the parties cannot agree on the amount to be paid to the Contractor by reason of termination under this clause, the Owner shall pay to the Contractor the amounts, as determined by the Owner's Authorized Representative as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

.1 With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:

- (1) cost of work performed or supplies delivered;



- (2) the costs of settling and paying any reasonable claims as provided in Article 14.4; and
- (3) a mark-up of ten percent for profit and overhead. Neither the Contractor nor any Subcontractor shall be entitled to profit or overhead associated with the portion of the work not performed, nor to profit associated with costs of demobilization.

.2 The total sum to be paid under .1 above shall not exceed the contract price, as reduced by the amount of payments otherwise made, and as further reduced by the contract price of work not done or supplies not delivered. The Owner may subtract from the amount claimed by the Contractor any claim the Owner has against the Contractor

**14.2.4** If the Contractor is not satisfied with any payments that the Owner's Authorized Representative shall determine to be due under this clause, the Contractor may proceed in accordance with Article 7.4 "DISPUTES."

**14.2.5** If the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss.

### **14.3 DEFAULT TERMINATION**

**14.3.1** The Owner may, upon ten days written notice to the Contractor, terminate, without prejudice to any right or remedy of the Owner, the Contract for default, in whole or in part, and may take possession of the Work and complete the Work by contract or otherwise in any of the following circumstances:

- .1 The Contractor refuses or fails to prosecute the Work or any separable part thereof with such diligence as will ensure the Substantial Completion of the Work within the Contract Time, or fails to meet any milestones established in the Contract Documents or fails to substantially complete the Work within this period;
- .2 The Contractor is in default in carrying out any provision of the Contract for a cause within his or his Subcontractors' control;
- .3 The Contractor fails to supply a sufficient number of properly skilled workers or proper equipment or materials;

- .4 The Contractor fails to make prompt payment to Subcontractors or for materials or labor;
- .5 The Contractor disregards laws, permits, ordinances, rules, regulations, or orders of any public authority having jurisdiction;
- .6 The Contractor breaches any provision of the Contract Documents;
- .7 The Contractor voluntarily abandons the Project;
- .8 The Contractor is a party to judicial proceedings in any State or any United States Court as follows:
  - (1) The filing by the Contractor of a voluntary petition in bankruptcy or in solvency, or a petition for reorganization;
  - (2) The consent to an involuntary petition in bankruptcy or the failure to vacate within sixty calendar days from the date of entry of any order approving an involuntary petition by the Contractor;
  - (3) The appointment of a receiver for all or any substantial portion of the property of the Contractor; and
  - (4) The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, that adjudicates the Contractor as bankrupt or insolvent or approves a petition seeking reorganization, or appoints a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree continues unstayed and in effect for any period of one hundred twenty consecutive days.
- .9 Upon at least one hundred twenty calendar days prior written notice by the Owner to the Contractor, at any time during the term of the Agreement, the Owner determines that maintaining the Agreement in force will harm, bring into disrepute, or affect the integrity of the Owner.

**14.3.2** Upon termination of this Agreement under this Article, the Contractor shall remove all of his employees and property from the Project in a smooth, orderly, and cooperative manner.

**14.3.3** The right of the Contractor to proceed shall not be terminated under Article 14.2 because of any delays in the completion of the Work due to unforeseeable

causes beyond the control and without the fault or negligence of the Contractor or his Subcontractors as specifically set forth in Article 8, "DELAYS AND EXTENSIONS OF TIME."

**14.3.4** If, after the Contractor has been terminated for default pursuant to Article 14.3, it is determined that none of the circumstances set forth in Article 14.3.1 exist, then such termination shall be considered a termination for convenience pursuant to Article 14.1. In such case, the Contractor's sole remedy will be costs permitted by Article 14.2.

**14.3.5** If the Owner terminates the Contract, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the cost of completing the Work including compensation for additional managerial, administrative and inspection services and any damages for delay, such excess amount shall be paid to the Contractor. If such expenses exceed the unpaid balance, the Contractor and his sureties shall be liable to the Owner for such excess amount.

**14.3.6** If the right of the Contractor to proceed with the Work is partially or fully terminated, the Owner may take possession of and utilize in completing the Work such materials, appliances, supplies, plant and equipment as may be on the site of the terminated portion of the Work and necessary for the completion of the Work. If the Owner does not fully terminate the right of the Contractor to proceed, the Contractor shall continue to perform the part of the Work that is not terminated.

#### **14.4 GENERAL TERMINATION PROVISIONS**

**14.4.1** After receipt of a Notice of Termination from the Owner, pursuant to Article 14.1 or 14.3, and except as otherwise directed by the Owner, the Contractor shall:

- .1 Stop Work under the Contract on the date and to the extent specified in the Notice of Termination;
- .2 Place no further purchase orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Contract that is not terminated;
- .3 Terminate all purchase orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
- .4 At the option of the Owner, assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the rights in the

contracts so terminated, in which case, the Owner shall have the right, at his discretion, to settle or pay any or all claims arising out of the termination of such purchase orders and subcontracts;

- .5 Settle all outstanding liabilities and all claims arising out of such termination of purchase orders and subcontracts, with the approval or ratification of the Owner, to the extent he may require, which approval or ratification shall be final for all the purposes of this Article;
- .6 Transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times and to the extent directed by the Owner to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the Work as has been terminated, the following:
  - (1) The fabricated or unfabricated parts, work in progress, partially completed supplies and equipment, materials, parts, tools, dies, jigs, and other fixtures, completed work, supplies and other material produced as part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and
  - (2) The completed or partially completed plans, drawings, shop drawings, submittals, information, releases, manuals, and other property related to the Work and which, if the Contract had been completed, would have been required to be furnished to the Owner.
- .7 Use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Owner or Owner's Authorized Representative, any property of the types referred to in Article 14.4.1.6; provided, however, that the Contractor:
  - (1) Shall not be required to extend credit to any buyer; and
  - (2) May acquire such property under the conditions prescribed by and at a price or prices approved by the Owner; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under the Contract or shall otherwise be credited to the Contract Price covered by the Contract or paid in such other manner as the Owner may direct;
- .8 Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and

- .9 Take such action as may be necessary, or as the Owner or Owner's Authorized Representative may direct for the protection and preservation of the property related to the Contract that is in the possession of the Contractor and in which the Owner has or may acquire an interest.

**14.4.2** If the convenience termination, pursuant to Article 14.1, is partial, the Contractor may file with the Owner a claim for an equitable adjustment of the Contract Price relating to the continued portion of the Contract (the portion not terminated by the Notice of Termination) for costs increased because of such partial termination. Such equitable adjustment as may be agreed upon shall be made in the Contract Price. Any claim by the Contractor for an equitable adjustment under this Article must be submitted in writing to the Owner's Authorized Representative within sixty days from the Notice of Termination.

**14.4.3** The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursed under Article 14.4 within sixty days of receipt of a written request from the Owner to do so.

**END OF ARTICLE 14**

## **SECTION E**

### **SPECIAL CONDITIONS**

1. **LOCATION OF WORK:** The Herndon Centennial Golf Course shall be accessed from Ferndale Avenue, 909 Ferndale Avenue, Herndon, VA 20170, near the Town-owned Bready Park. The Project is generally located at 38.975172° Latitude and -77.393803° Longitude on 2023 Google Maps.
2. **SCOPE OF WORK:** The Contractor shall perform the following work which includes, but is not limited to, reconstruction of seventeen (17) tees complexes (two (2) complexes at a time to facilitate play during construction window), construction of three (3) fairway tie-ins, installation of new drainage throughout to improve turf conditions, irrigation improvements for each tee complex, removal of trees on several tees to improve line of play, and other incidentals associated with this work. The Town of Herndon shall provide temporary tees to keep the golf course in play throughout construction. The Contractor shall coordinate with the Owner's Authorized Representative (OAR) for scheduling the work on each of the pair of tees.
3. **WORKING HOURS:** Work is limited to between the hours of 7:00 a.m. and 4:00 p.m. Monday through Friday. No work shall be performed on Saturday, Sunday or Town holidays. Afterhours work requires approval at least 48 hours prior to work and written notification given to the Herndon Police Department. Requests for afterhours work and any exceptions shall be submitted in writing to the Director of Public Works.
4. **STAGING AREAS:** All on-site staging / storage must be approved by the OAR but will generally be on a portion of the existing golf course at the Herndon Centennial Golf Course. There will be at least one staging area on either side of Herndon Parkway. No staging shall take place in the clubhouse parking lot. The Contractor shall assume all responsibility for the delivery, unloading, protection, and safekeeping of products or equipment stored on the job site. The job site may not be unreasonably encumbered with materials or equipment. Equipment and materials may be stored onsite for more than 24 hours. Full safety fence measures are required for the staging area as this is an active park site. Contractor is responsible for clearing and removal of existing debris. Staging / storage area shall be restored to existing or better condition after use.
  - 4.1 The Contractor shall submit a mobilization and storage area plan within 10 days of Notice to Proceed. Plan shall include, but is not limited to, entrance and exit routes, proposed trailer location(s), material storage, stockpiles, erosion & siltation controls and safety fence installation, protection of existing utilities and structures, security, restoration, etc., for the project area. The Contractor shall coordinate the development of this plan with the OAR.
  - 4.2 The Contractor is cautioned that the extent of the proposed work in relation to the area of the job site places strict limitations on the amounts of material and equipment that can be stored on the job site at any given time. The Contractor shall limit the storage of materials and equipment in the immediate vicinity of

construction. The job site may not be unreasonably encumbered with materials or equipment.

- 4.3 The Contractor is further cautioned that traffic on adjacent streets and within the remainder of the existing parking lot may place strict limitations on the rates and means of delivery of materials, equipment, supplies, and in some cases the hours during which deliveries may be made. The Contractor shall assume all responsibility for the delivery, unloading, protection, and safekeeping of products or equipment stored on the job site.
- 4.4 It shall be the responsibility of the Contractor to be familiar with the limitations on storage space and the limitations on times, rates, and means of deliveries to and the removals from the job site whether such limitations are imposed by law, easements, or physical conditions at the job site or access thereto. A town truck route map is available upon request.
- 4.5 Full erosion and sediment control and safety measures must be installed at staging area, including (but not limited to) inlet protection and silt fence. Contractor shall coordinate installation with the OAR.
- 4.6 Demolition and other stockpile management: Daily demolition activity shall be performed in accordance with the Specifications included in this contract. Demolition materials must be hauled away for proper disposal and may not be stored in the staging area.

## **5. USE OF THE ADJOINING PROPERTIES:**

- 5.1 The Contractor shall not block otherwise open Herndon Centennial Golf Course entrances.
- 5.2 Uninterrupted pedestrian access to the Herndon Centennial Golf Course club house adjacent to the construction site must be provided at all times. If a primary driveway or entrance to the Herndon Centennial Golf Course must be temporarily closed, the Contractor shall coordinate with the OAR to provide alternate access to the building.
- 5.3 Uninterrupted delivery access to all buildings and parking lots adjacent to the construction site must be provided at all times. The Contractor shall coordinate with the Herndon Centennial Golf Course to provide alternate delivery access if the primary delivery access must be temporarily closed.
- 5.4 The full width of all the areas immediately outside the construction area shall remain unobstructed at all times. Non-motorized and pedestrian traffic on adjacent sidewalks that are outside of the construction area shall remain uninterrupted.
- 5.5 Pedestrian traffic must remain uninterrupted on Ferndale Avenue. Pedestrian detours and appropriate signs shall be provided if needed to maintain access to the

Herndon Centennial Golf Course.

- 5.6 Contractor shall coordinate with the OAR and the Herndon Centennial Golf Course to understand and provide for access and delivery needs.
- 5.7 Ensure site conditions remain clean and debris-free during construction activities. Project site will be monitored for litter and debris.
6. **OWNERS' RIGHT TO SUBCONTRACT WORK:** The Owner may hire separate subcontractors for specific work that is outside the project scope as defined in the invitation for bid.
7. **WORK SITE SAFETY:** The Contractor shall comply with all sections of the General Terms and Conditions pertaining to safety. The Contractor shall comply with all federal, state, and local safety regulations and laws, and shall ensure compliance by all staff and subcontractors.
8. **PERMITS AND FEES:**
  - a. OWNER PAID PERMITS AND FEES: The Owner will, where applicable, pay for:
    1. There are no known permits needed for which the Owner is responsible.
  - b. CONTRACTOR PAID PERMITS AND FEES: The Contractor will be responsible for obtaining and paying for all fees, permits and licenses, not specifically exempted herein, necessary for the proper execution of the Work, including but not limited to:
    1. There are no known permits needed for which the Contractor is responsible.
9. **COORDINATION OF WORK:**

Unless otherwise indicated in the Contract, the Contractor shall, at a minimum, be governed by the following:

  - 9.1 **General Requirements:**
    - 9.1.1 The Contractor shall plan and schedule the work and shall submit his overall work plan in the form of a written Progress Schedule, as described herein, for the OAR's review and acceptance.
    - 9.1.2 When preparing the Progress Schedule, the Contractor shall consider all known constraints and restrictions such as holidays, seasonal weather, traffic, utility, railroad, right-of-way, environmental, permits, or other known or specified limitations to the work.
    - 9.1.3 At the Pre-Construction Conference the Contractor shall be prepared to discuss his planned or contemplated operations relative to the Contract requirements.



9.1.4 Delays resulting from the Contractor's failure to provide the Progress Schedule will not be considered just cause for extension of the Contract time limit or for additional compensation.

9.2 Progress Schedule Submission Requirements:

9.2.1 The Contractor shall submit to the OAR an electronic copy of the written Baseline Progress Schedule at least 7 calendar days prior to beginning work. The Progress Schedule shall represent the Contractor's overall work plan to accomplish the entire scope of work in accordance with the requirements of the Contract.

9.2.2 Two Week Look-ahead (TWLA) Progress Schedule: At least 7 calendar days prior to beginning work, the Contractor shall submit to the OAR, an initial written TWLA Progress Schedule for any work planned for the first two weeks. Every week thereafter, on a day agreed to by the Contractor and the OAR, the Contractor shall submit to the OAR, a written TWLA Progress Schedule for the following two-week period. The TWLA schedule shall provide a detailed list of operations to indicate the type of operation, locations of the work, proposed working days and hours, and the start and finish dates for any work planned, started, in progress, or scheduled for completion during the two-week period. The TWLA Progress Schedule shall also indicate any critical stages of work requiring additional oversight or required inspection.

9.2.3 Progress Schedule Revisions: The Contractor may revise his overall plan of operations at any time; however, the Contractor shall submit a Revised Progress Schedule to reflect any changes in his overall sequence of operations or general schedule.

9.2.4 The Contractor may be required, as determined by the OAR, to submit a Revised Progress Schedule. Circumstances that may prompt the OAR's decision to request a Revised Progress Schedule may include deviations from the overall sequence of operations or if the actual progress of work varies by one month or more from the currently accepted Progress Schedule. When required by the OAR, the Revised Progress Schedule shall be submitted within 7 calendar days of receipt of OAR's written request. The Revised Progress Schedule shall be submitted in the form of the Progress Schedule as defined herein, to reflect the changes in the Contractor's overall work plan. The accepted Revised Progress Schedule will replace any previously accepted Progress Schedule for the remainder of the work.

10. **FEDERAL IMMIGRATION REFORM AND CONTROL ACT OF 1986, AS AMENDED AND §40.1-11.1, CODE OF VIRGINIA:** In cases where the Town harbors a reasonable suspicion that the Contractor's or subcontractor's employee(s) may be not legally eligible for employment in the United States, the Contractor agrees to be audited by the Town for compliance. During this audit, Contractor shall provide Town access to any public documentation that relates to verifying the employee's legal eligibility for

employment in the United States and that relates to employees of the Contractor or of any subcontractor working on the subject of this contract. The documentation will indicate that the Federal I-9 employment eligibility verification process or the federal Employment Eligibility Verification (E-Verify) Program or both as to each such employee has or has not been undergone. The Contractor shall not produce documentation in this regard that is explicitly prohibited by federal or Virginia law from public disclosure. The documentation may take the form of an affidavit of the Contractor.

The presence of an alien not legally eligible for employment in the United States working on the subject of this contract among other things shall constitute a breach of this contract. Since damages for such a breach would be uncertain and difficult to determine, Town's damages (among others) for such breach shall equal the amount paid by the Contractor or subcontractor as wages to each alien not legally eligible for employment in the United States. This provision shall not limit or replace any other contract damages Town may seek or be entitled to by law. The Contractor shall include and enforce the language in this paragraph in every subcontract issued under this contract and shall require the same of their subcontractors.

11. **REPRESENTATIVES:** The Owner hereby designates the following representatives to this project:

- 11.1 PROJECT MANAGER: Randy Schell, Chief Program and Project Manager

- 11.2 OWNER'S AUTHORIZED REPRESENTATIVE (OAR): Rich Sharkey, Project Engineer

Only these representatives, hereby designated, are authorized to direct a field change, change order, or request for proposal. The Owner reserves the right to designate other authorized representatives. Any directive for a change in cost/time must be confirmed in writing by the Owner.

12. **ACCESSIBILITY:** Access to the working area is limited. All traffic control devices used by the Contractor shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) and are subject to approval by the Town of Herndon.
13. **AS-BUILT DRAWINGS:** As-built drawings are the final set of drawings that must be produced at the completion of the construction project and shall be provided to the town for approval. They must include all changes that have been made to the original construction drawings, including notes, approved modifications, and any other information that accurately reflects the as-built condition of the final product at the end of construction. The as-built drawings and all markups shall be created digitally. All changes must be red marked.
14. **TIME FOR COMPLETION:** All Work under this contract shall be completed in the time as stated in Article 4 of the Town of Herndon, Virginia Construction Contract.
  - 14.1 Stated time for completion includes a time allowance for approval and procurement of the required materials.

- 14.2 No on-site work shall be started until the location of work has been coordinated with the OAR. Once on-site work has started, it shall continue without interruption until completed.
- 14.3 The Contractor's proposed work schedule shall include his scheduling for submittals and the procurement of materials as well as the following items:
- 14.3.1 Preparation of site including, but not limited to: Installation of any traffic control devices, protection of items to remain, and removal of existing improvements.
  - 14.3.2 Establishment of detouring around all work areas with temporary signage. Temporary detours or construction areas shall use barrels with flashing lights.
  - 14.3.3 Restoration of existing roadway surface with milling and paving as necessary after construction completion.
  - 14.3.4 Miscellaneous work including, but not limited to, adjustment and protection of existing utilities and covers and clean-up and restoration of surfaces.
15. **MEASUREMENTS:** All dimensions given for existing work and all proposed connections to existing work shall be verified by the Contractor by field measurements. All quantities listed in the bid package are estimates only and require field verification by Contractor. The town is not responsible for discrepancies between proposed and actual quantity totals. Upon the discovery of any discrepancies between the Contract Documents and the existing conditions, the OAR and the Department of Public Works shall be notified immediately. The Contractor shall comply with all other requirements of paragraph 1.2.2, and Articles 4.2, 12.8 and 12.9 of the General Conditions.
16. **TRUCKING:** All trucks carrying materials or debris shall be loaded and unloaded in a manner to prevent dropping of materials on streets. Loose materials or debris deposited on the streets due trucking activities shall be removed immediately upon occurrence. Established Town of Herndon truck routes are to be utilized. The Contractor shall comply with all other requirements of Article 4.19 of the General Conditions. A copy of the Town of Herndon Truck Route Map is available upon request.
17. **EXISTING WORK:** Existing work to be replaced shall be cut, drilled, altered, removed, or temporarily removed and replaced for performance of work under the contract. Existing items that are replaced shall match similar existing work unless shown or specified otherwise. Work remaining in place that is damaged during construction shall be restored to the condition at the time of contract award, unless specified or shown otherwise. The Contractor is responsible for verifying the exact location of all utilities prior to construction and for any damages that may occur due to their failure to locate and protect these underground facilities.
18. **MAINTENANCE OF TRAFFIC:** All traffic maintenance and detour plans shall be submitted within 5 days of Notice of Proceed. Plans shall comply with the Virginia Work

Area Protection Manual, MUTCD, and Contract.

- 18.1 Temporary traffic control installations shall be reviewed daily by the Contractor to ensure the functionality of the temporary traffic control devices and compliance to the to the latest edition of the Virginia Work Area Protection Manual and Maintenance of Traffic Plan. The Contractor shall document these reviews on a weekly basis at a minimum utilizing the Work Zone Safety Checklist form provided in Appendix B of the Work Area Protection Manual. The Contractor shall provide a copy of this documentation to the OAR for each review. A copy of the latest edition of the Virginia Work Area Protection Manual is to be available on site at all times. The Contractor must coordinate with the OAR and document any and changes of the traffic control plan.
- 18.2 A flagger is required when work must take place within the right-of-way. Flaggers must communicate clear, safe passage around the work zone to non-motorized vehicles, pedestrians and motorists. Flaggers must be able to communicate clearly and politely in English. Closures of the sidewalk or of lanes must be coordinated with the OAR and must be approved by the Town of Herndon. Sidewalks on at least one side of the street must remain open at all times.
- 18.3 Contractor shall maintain two-way traffic at all times and on all roads during construction.
- 18.4 All traffic control devices used by the Contractor shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) and are subject to approval by the Town of Herndon.
- 18.5 As conditions permit, excavated areas within the roadway shall be backfilled or covered with a steel plate at the end of each workday. Steel plates shall be recessed into the roadway and shall follow all applicable Town requirements. Contractor shall coordinate steel plate installation with the OAR.

**19. TRAFFIC CONTROL DEVICES:**

- 19.1 All traffic signal and signing work including adjustments shall be constructed in accordance with the current Town of Herndon Standards, Virginia Department of Transportation (VDOT) Road & Bridge Specifications dated 2020, VDOT Road & Bridge Standards dated 2016, the Manual on Uniform Traffic Control Devices, 2009 Edition (MUTCD), the 2011 Virginia Supplement to the MUTCD Revision 2, the 2002 National Electrical Code, Special Provision Copied Notes and Special Provisions at the time of advertisement.

**END OF SECTION E**

THE TOWN OF HERNDON

SECTION F

SPECIFICATIONS

FOR CONSTRUCTION OF

HERNDON CENTENNIAL GOLF COURSE TEE  
RENOVATION PLAN