

GENERAL CONDITIONS

CONDITIONS AT SITE OR STRUCTURE

Vendor shall be responsible for having ascertained pertinent local conditions such as location, accessibility and general character of the site or building, and the character and extent of existing work within or adjacent to the site. Claims, as a result of failure to do so, will not be considered by the Authority.

CHANGES IN THE WORK

The Authority, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly. All such changes in Work shall be authorized by written Change Order, and shall be performed under the applicable conditions of the Contract Documents.

CHANGES IN THE CONTRACT SUM

If the Vendor wishes to make a claim for an increase in the Contract Sum, it shall give the Authority written notice within ten (10) days after the occurrence of the event giving rise to such claim. This notice shall be given by the Vendor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

TIME FOR COMPLETION

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

The Vendor shall proceed with the Work with the diligence necessary to insure Substantial Completion within the Contract Time. It is expressly understood and agreed by and between the Vendor and the Authority that the Contract Time for the completion of the work described herein is a reasonable and adequate time, taking into consideration the average climate and economic conditions and other factors prevailing in the locality of the Work.

TERMINATION

- (a) If the Vendor is adjudged a bankrupt or insolvent, or if it makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the Vendor or for any of its property, or if it files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if it fails to supply sufficient skilled workmen or suitable materials or equipment, or if it fails to make prompt payments to subcontractors or for labor, materials or equipment, or if it refuses or fails to prosecute the Work or any separable part thereof, with such diligence as will insure its completion within the Contract Time, or if it fails to complete the Work within the Contract Time required, or if it disregards laws, ordinances, rules, regulations, directions or orders of any public body having jurisdiction over the Work, or if it otherwise violates any provision of the Contract Documents, then the Authority may, without prejudice to any other right or remedy, seven (7) days after delivery of a written notice to the Vendor and its surety, terminate the services of the Vendor and take possession of the Project.

- (b) Where the Vendor's services have been so terminated by the Authority, the termination shall not affect any rights the Authority then has or that may thereafter accrue against the Vendor. Any retention or payment of monies by the Authority due the Vendor will not release the Vendor from compliance with the Contract Documents.
- (c) Termination for Convenience: The Authority may, effective not less than after seven (7) days from delivery of a written notice to the Vendor, without cause and without prejudice to any other rights or remedies it may have, terminate this Contract for its own convenience for any reason. Termination for default, if wrongfully made under this article or other provision shall be treated as a termination for convenience. When this Contract has been terminated for convenience, the Vendor shall be paid only for work and labor performed, plus fifteen percent (15%) as and for its overhead and profit.

VENDOR'S LIABILITY INSURANCE

The Vendor shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of or result from the Vendor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (a) claims under workers' or workmen's compensation, disability benefit and other similar employee benefit acts;
- (b) claims for damages because of bodily injury, occupational sickness or disease, or death of its employees;
- (c) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees;
- (d) 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 Vendor, or (2) by any other person;
- (e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting there from; and
- (f) claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The insurance shall be written for not less than any limits of liability specified in the Contract Documents or required by law, whichever is greater. Certificates of Insurance acceptable to the Authority shall be filed with the Authority prior to commencement of the Work.

The Vendor shall endorse the Authority on its insurance policy as an additional insured to protect the interests of the public. Certificates of Insurance and Additional Insured Endorsements acceptable to the Authority shall be filed with the Authority prior to commencement of the Work. These Certificates and Endorsements shall contain a provision that coverages afforded under the policies will not be cancelled

until at least thirty days prior written notice has been given to the Authority. Insurance certificates must include an additional insured endorsement naming the following as an additional insured: "The Northern Virginia Regional Park Authority, its officers, directors, agents, employees, and volunteers."

- General liability in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- Property damage in the amount of not less than \$1,000,000 for any one accident. Additional limits may be required.
- Umbrella policy for not less than \$1,000,000.
- Auto liability insurance for not less than \$1,000,000 combined single limits.
- Workers' Compensation per statutory limits and employer's liability in the following minimum amounts: EL Each Accident - \$500,000, EL Disease Policy Limit - \$500,000, EL Disease Each Employee - \$500,000.
- Vendor shall endorse the Authority on its insurance policy as an additional insured using form CG 20 1011 85 or CG 20 10 07 04.

INDEMNIFICATION

To the fullest extent permitted by law, the Vendor shall indemnify and hold harmless the Authority and his agents and employees from and against all claims, damages, losses and expense, including but not limited to attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, 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 the 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, 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. 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.

In any and all claims against the Authority or any of their agents or employees by any employee of the Vendor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone whose acts any of them may be liable, the indemnification obligation under this Article 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 Vendor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit act.

The Authority shall retain such monies due or to become due the Vendor under the Contract as considered necessary by the Authority until such suits, claims for damages costs or losses have been settled or otherwise disposed of or satisfactory evidence to that effect has been furnished to the Authority.

CONTRACT LIABILITY

The Vendor shall be liable to Authority for all costs the Authority incurs as a result of the Vendor's failure to perform this Contract in accordance with its terms. The Vendor's failure to perform shall

include the failure of its suppliers and or Subcontractors of any tier to perform.

Vendor's liability shall include, but not be limited to, (1) damages and other delay costs payable to the Authority; (2) the Authority's increased costs of performance, such as extended overhead and increased performance costs resulting from Vendor-caused delays, improper Vendor work, or termination of the Vendor; (3) warranty and rework costs; (4) liability to third parties; (5) excess costs; and (6) attorney's fees and related costs.

WARRANTY

The Vendor warrants to the Authority that all materials and equipment furnished under this Contract will be new unless otherwise specified and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Authority, the Vendor shall furnish satisfactory evidence of the kind and quality of materials and equipment.

The Vendor shall promptly correct all Work rejected by the Authority as defective or as failing to conform to the Contract Documents whether observed before or after substantial Completion and whether or not fabricated, installed, or completed. The Vendor shall bear all costs of correcting such rejected Work.

If, within one year after the Date of Substantial Completion of the Work or designated portion thereof or within one year after acceptance by the Authority of designated equipment or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Vendor shall correct it promptly after receipt of a written notice from the Authority to do so unless the Authority has previously given the Vendor a written acceptance of such condition.

This obligation shall survive termination of the Contract. The Authority shall give such notice promptly after discovery of the condition.

CONTRACTUAL DISPUTES

Contractual claims, whether for money or for other relief, shall be submitted in writing not later than (60) sixty days after initial payment; however, written notice of the Vendor's intention to file such claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. A written decision upon any such claims will be made by the Authority within thirty (30) days after submittal. The Vendor may not institute legal action prior to receipt of the Authority's decision on the claim unless it fails to render such decision within 120 days. The decision of the Director of Planning and Development or other signatory on the Contract shall be final and conclusive unless the Vendor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in § 11-70 of the Code of Virginia. Failure of the Authority to render a decision within 120 days shall not result in the Vendor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Authority's failure to render a decision within the time allotted shall be the Vendor's right to immediately institute legal action. No administrative appeals procedure pursuant to § 11-71 of the Code of Virginia has established for contractual claims under this Contract.

MANDATORY CLAUSES

Mandatory Clauses for Agreements with Northern Virginia Regional Park Authority

The following provisions apply to any agreement between the Northern Virginia Regional Park Authority ("Customer") and any non-governmental entity ("Vendor"):

1. Equal Opportunity Employment

a. During the performance of the Agreement, the Vendor agrees as follows:

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

(ii) The Vendor, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, shall state that Vendor is an equal opportunity employer.

(iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the notice, advertisement, and solicitation requirements of this paragraph.

b. The Vendor shall cause to be included the provisions of the foregoing paragraphs a.(i), a.(ii), and a.(iii) (substituting the subcontractor or vendor for Vendor as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

2. Drug-Free Workplace

a. During the performance of the Agreement, the Vendor agrees to (i) provide a drug-free workplace for the Vendor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Vendor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Vendor that the Vendor maintains a drug-free workplace; and (iv) cause to be included the provisions of the foregoing clauses (substituting the subcontractor or vendor for the Vendor as the obligated party) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

b. For the purposes of this paragraph 2, "drug-free workplace" means a site for the performance of work done in connection with the Agreement by Vendor where its employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Agreement.

3. Certifications Regarding Felons and Sex Offenders. If any services will be provided at a Virginia public school, pursuant to Code of Virginia § 22.1-296.1.C., Vendor certifies that it and any of its employees who will have direct contact with any public school students there have not been convicted of a felony or any offence involving sexual molestation or physical or sexual abuse or rape of a child. Vendor shall promptly report to the Customer any change that would make this certification no longer accurate. Additionally, Vendor certifies that none of its employees who will provide any services at any facility or property of the Customer is registered in the Sex Offender and Crimes Against Minors Registry maintained by the Commonwealth of Virginia pursuant to Code of Virginia § 9.1-900, et seq.

4. No Employment of Unauthorized Aliens. Vendor represents and warrants that Vendor does not, and shall not during the performance of this Agreement, knowingly employ any unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

5. Statement of Nondiscrimination Against Faith-Based Organizations. Customer does not discriminate against faith-based organizations. (See Va. Code § 2.2-4343.1)

6. Prompt Payment Requirements

a. Within seven days after Vendor receives amounts paid for work subject to the Agreement performed by any “subcontractor”, as defined in Code of Virginia § 2.2-4347, Vendor shall take one of the two following actions:

(i) Pay the subcontractor for the proportionate share of the total payment received from Owner attributable to the work performed by the subcontractor; or

(ii) Notify Owner and the subcontractor in writing of Vendor’s intent to withhold all or part of the subcontractor’s payment and the reason for nonpayment

b. Vendor shall provide its Federal employer identification number with each application to Owner for payment.

c. Vendor shall pay interest to any “subcontractor” on all amounts owed by Vendor that remain unpaid after seven days following receipt by Vendor of payment from Owner for work performed by such subcontractor relating to the Agreement except as to amounts withheld as allowed by 6(a)(ii).

d. Unless otherwise provided under the terms of the Agreement, interest shall accrue at the rate of 1% per month.

e. Vendor shall include in its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

f. No obligation imposed by this paragraph 6 shall be construed to create any obligation of Customer. Under Code of Virginia §2.2-4354, no modification to the Agreement may be made for the purpose of providing reimbursement for the interest charge, and Vendor shall not invoice Customer for any such charge.

*******END OF GENERAL CONDITIONS*******