



## CITY OF MANASSAS, VIRGINIA

FINANCE DEPARTMENT  
PURCHASING DIVISION

8500 Public Works Drive, Manassas, VA 20110  
Telephone: (703) 257-8368 Facsimile: (703) 257-5813  
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### CITY OF MANASSAS STANDARD CONTRACT FOR GOODS, SERVICES, CONSTRUCTION AND INSURANCE RESULTING FROM AN RFP

CONTRACT NO: 17P007A

SUBJECT: REPLACEMENT OF HVAC AND WATER HEATER LOAD  
MANAGEMENT SWITCHES

Between:

**CITY OF MANASSAS  
8500 PUBLIC WORKS DRIVE  
MANASSAS, VA 20110**

**CONTACT: JAMES BOWER, OPS & GENERATION MANAGER  
PHONE: 703-257- 8354  
FAX: 703-257-8361  
E-MAIL: [jbower@ci.manassas.va.us](mailto:jbower@ci.manassas.va.us)**

**And the Contractor:**

**AIR-RIGHT ENERGY DESIGN INC  
12167 LIVINGSTON ROAD  
MANASSAS, VA 20109**

**CONTACT: RICHARD GRAHAM, PRESIDENT  
PHONE: 703-530-0166  
FAX: 703-530-0133  
E-MAIL: [rgraham@air-right.com](mailto:rgraham@air-right.com)**

This Contract (hereinafter, "Contract") is entered into on and as of April 3, 2017 by and between the CITY OF MANASSAS, a municipal corporation of the Commonwealth of Virginia (hereinafter, "City"), and Air-Right Energy Design Inc (hereinafter "Contractor"), for Goods, Services, Construction and/or Insurance identified herein, on the following terms and conditions.

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**I. BASIC TERMS:**

**A. DEFINITIONS:**

Capitalized terms that are defined in the VPPA, City Policy, or the City's standard Request for Proposal for Goods, Services, Construction or Insurance have the same meanings in this Contract as are given in that law, policy, or Request for Proposal, except as provided below. Capitalized terms not defined in those sources but used in this Contract have the following meanings, unless the context clearly requires otherwise. Undefined terms have their common meanings appropriate to their context.

1. **City or Owner:** The City of Manassas, Virginia or its actually authorized agents. Unless the context clearly requires otherwise, such as for an affirmative vote of the elected body, the City Manager, Purchasing Manager, or other designee of City Council may always act on behalf of the City. Under Virginia law, no employee or agent may bind the City unless he or she has actual authority to do so; the doctrine of apparent authority has no application to municipalities.
2. **City Policy:** The applicable provision contained in the City of Manassas Public Procurement Policy, as amended.
3. "Contract Administrator" assigned to administer the Contract for the City is James Bower, Ops & Generation Manager, 703-257- 8354, but the City may designate a new Contract Administrator by notice to the Contractor.
4. "Contractor's Representative" means the person who is responsible for the performance obligation of the Contractor under this Contract. The initial Contractor's Representative is Richard Graham, President, 703-530-0166, but the Contractor may designate a new Contractor's Representative by notice to the City.
5. "Drug-Free Workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.
6. "Notice of Default" means a notice sent to the other party's designee (Contract Administrator for the City, Contractor's Representative for the Contractor) setting forth the facts showing that party to be in default under the Contract.
7. "Notice of Termination" means a notice sent to the other party's designee (Contract Administrator for the City, Contractor's Representative for the Contractor) informing that party of the termination of the Contract as of a particular date.
8. "RFP" means the Request for Proposal which led to the formation of this Contract.

9. "Using Department" for purposes of this Contract shall mean Utilities-Electric Department.

**B. PURPOSE OF THE CONTRACT:**

1. The Contractor hereby agrees to provide the following Goods, Services, Construction and/or Insurance to the City of Manassas:

Replacement of HVAC and water heater switches in private homes for the purpose of electric load management in accordance with the specifications of RFP 17P007.

**C. CONTRACT PERIOD AND EXTENSIONS:**

1. The base term for this Contract shall be for one (1) year, April 3, 2017 through April 2, 2018 and may be renewed for three (3) additional one (1) year periods upon mutual consent.
2. This Contract may be extended as provided in the RFP or by change order or amendment. The City shall give the Contractor reasonable written notice of intent to renew prior to the expiration date of the current Contract. In the absence of any notification to renew, the Contract shall automatically terminate on the expiration date specified in the Contract. Agreement to extend the Contract term shall not be final until the Contractor provides written acknowledgement of the extension. The option to renew shall be exercised at the sole discretion of the City.
3. No fixed price Contract, however, may increase the price by more than twenty-five percent of the amount of the Contract or \$50,000, whichever is greater, without a recorded affirmative vote of the City Council. The City may extend the term of this Contract for Services to allow completion of any work undertaken but not completed during the original term of the Contract.

**D. CONTRACT AMOUNT:**

In return for the Goods, Services, Insurance and/or Construction of the RFP identified above, and subject to the Termination for Non-Appropriation provision of this Contract, the City certifies that sufficient funds are budgeted and appropriated and shall compensate the Contractor in accordance with the payment provision of this Contract as set forth herein:

DESCRIPTION	UNIT COST
Install City provided HVAC load control switch which may involve the removal of existing switch.	\$108.00 ea
Install City provided water heater load control switch which may involve the removal of existing switch.	\$116.00 ea

DESCRIPTION	UNIT COST
Install City provided Dual Mode load control switch which may involve the removal of existing switch(s).	\$128.00 ea
Install City provided HVAC and water heater load control switches in the same home during the same trip which may involve the removal of two (2) existing switches.	\$169.00 ea
*Remove existing HVAC load control switch	\$ 90.00 ea
*Remove existing water heater load control switch	\$ 95.00 ea
*Remove existing HVAC and water heater load control switches in the same home during the same trip.	\$139.00 ea
Service Call – Non covered Customer issue such as a code violation or bad water heater tank that does not include replacing existing load management switch.	\$130.00 visit
Service Call – The issue is with the water heater and not the load management device. Provide diagnostics and repair per contract.	\$180.00 visit
Service Call - The issue is with the customers HVAC equipment and not the load management switch. Provide the customer with First Call AC diagnostics.	\$130.00 visit
<p><b>* The Contractor will <u>not</u> be compensated for the removal of existing switches at a home in order to accommodate the installation of new load control switches. The removal bid costs will <u>only</u> be allowed when the Contractor is removing a switch with no switch being installed.</b></p>	

**II. FORMATION:**

**A. CONDITIONS PRECEDENT TO FORMATION:**

Before any Contract between the City and the Contractor is effective, the following conditions precedent must be satisfied. Satisfaction of these conditions is the responsibility of the Contractor. If, after performance under the Contract, the City learns that a condition precedent was not met, the City may, if permitted by law, ratify the Contract by affirmative recorded vote or may disclaim it, in its sole discretion.

1. Insurance: If the RFP requires certain insurance, the Contractor must provide proof of insurance in the amounts required by the Bid with an insurance company licensed to do business in the Commonwealth of Virginia. As used in this provision, “proof of insurance” means a copy of the relevant portions of the insurance declaration page, or its equivalent, showing continuing coverage at the required amounts.
  - a. Unless the Specifications state otherwise, the City shall be made an additional insured on all required policies of insurance.
  - b. No change, cancellation (other than noted below), or non-renewal shall be made in any insurance coverage without a thirty (30) day written notice to the Purchasing Manager. Notice for cancellation due to nonpayment of premium shall be no less than fifteen (15) days. The Contractor shall furnish proof of insurance prior to any change or cancellation date. The failure of the Contractor to deliver such proof of insurance is grounds for termination of the Contract.
  - c. Insurance coverage required hereunder shall be in force throughout the Contract period. Should the Contractor fail to provide proof of insurance within ten (10) days of written notice requesting such at any time during the Contract term, the City shall have the absolute right to terminate the Contract.
  - d. Compliance by the Contractor and any subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor or any subcontractors of their liabilities and obligations under this Contract. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors and any person employed by the subcontractors.
  - e. The City may and will, if requested by Contractor, reasonably accept proof of insurance provided by subcontractors or partners of the Contractor covering risks and hazards relating to work to be performed by such subcontractor and partners, in lieu of proof of insurance provided by Contractor. However, this shall not relieve Contractor of any of its other duties under this Paragraph II.A.1.
2. Bonds: If the Bid requires payment or performance bonds (or certified checks or bank draft or Irrevocable Letter of Credit), then bonds with surety satisfactory to the City attorney shall be submitted to the Purchasing Manager for approval.
3. Permits and licenses: If the procurement of the Goods, Services, Insurance or Construction that is the subject of this Contract requires possession of any licenses or receipt of any permits other than construction permits, then Contractor shall obtain those licenses and permits.

4. Payment of Debts: Contractor must pay all amounts shown as due to the City on the City's accounts, even if a dispute exists as to the debt's validity or enforceability.

**B. PARTIES:**

1. The sole parties to this Contract are the City of Manassas and the Contractor.
2. The General Contractor remains responsible for work of the subcontractor(s) notwithstanding the naming of the subcontractor(s) in the proposal, and the City reserves the right to approve or reject any subcontractor(s) or substitute subcontractor(s).
3. It is understood and agreed that the Contractor is at all times herein acting as an independent contractor.
4. Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of the City in advance. No assignment without such permission will relieve the Contractor of any responsibility under this Contract.
5. There are no intended third party beneficiaries of this Contract, unless it is made available by rider for other governmental entities to use. Making the Contract available to them by rider is the sole extent of the intended third party benefit.
6. If this Contract is made available by rider for other governmental entities to use, any contracts formed between the Contractor and such other governmental entities shall be solely between those parties. The City shall not be a party to any of these Contracts.

**C. AUTHORITY TO EXECUTE:**

By executing this Contract on behalf of Contractor, the Contractor's Representative warrants that he or she has full authority to do so.

**D. INCORPORATION OF DOCUMENTS:**

The documents listed below in this Section IID are hereby incorporated by reference and fully made a part of the Contract. This Contract and the incorporated documents describe the subject of the Procurement, the particulars of its performance, the process and time for payment, and the rights and remedies of the parties (collectively, "the terms"). In case of any conflict between those documents' terms, the documents shall be given precedence in the following order, from highest to lowest:

1. Section II of the Request for Proposal (if any), inclusive of any Addendums, except to the extent modified through negotiation permitted by the VPPA,
2. This Contract,
3. Sections I and III-VI, both inclusive, of the RFP (if any),
4. The Proposal of the Offeror.

**III. PERFORMANCE:**

**A. CONTACTS:**

In addition to the Contract Administrator and the Contractor's Representative, the parties may designate additional contacts for exchange of information.

**B. BEGINNING PERFORMANCE**

Contractor shall not begin performance under the Contract until the Contract Administrator issues it a purchase order, Procurement Card order, or other notification to proceed.

**C. RISK OF LOSS AND ACCEPTANCE OF WORK:**

1. Contractor shall perform the work and deliver all Goods in accordance with recognized and customarily accepted industry practices, and performance shall be considered complete when the Contract Administrator approves the Services as acceptable. If the Contract Administrator rejects any deliverable, the Contractor shall be notified and shall have fourteen (14) calendar days from date of issuance of notification to correct the deficiencies and resubmit the deliverable.
2. Unless the City provides the materials or supplies, the Contractor bears the risk of damage or loss for materials or supplies covered by the Contract until delivery to the designated point. If the City rejects any deliverable, the Contractor bears all risk of damage or loss on them after notice of rejection. The Contractor must remove rejected materials or supplies at its own expense promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of a rejected delivery. If the Contractor does not remove rejected materials within ten (10) days after notification of rejection, the City may return the rejected materials or supplies to the Contractor at Contractor's risk and expense or may dispose of them as abandoned property.



**D. WARRANTY:**

1. The Contractor warrants that all Services it performs and all Goods, Insurance, and Construction it delivers to the City will be of good quality and meet the specifications of this Contract and of all literature supplied by the Contractor as part of the selection process which led to the award of this Contract. "Literature" as used in this provision means any and all brochures, fliers, catalogs, Proposals, web sites, email, or other information, in whatever written form, relating to the quality, utility, economic advantages, or composition of the Goods or Services. This warranty is in addition to and does not substitute for the Contractor's warranties of title, against infringement, of merchantability, and of fitness for particular purpose under Virginia Code §§ 8.2-312, 8.2-314, and 8.2-315, which the parties expressly agree apply to this Contract.
2. The Contractor shall furnish all guarantees and warranties that the terms of this Contract require to the Purchasing Manager before the City makes final payment on the Contract. Unless otherwise stated, manufacturer's standard warranty applies.

**E. INVOICES:**

1. Unless otherwise provided in the RFP, Contractor shall submit all its invoices for payment in the fiscal year in which the Goods, Services, Insurance or Construction were provided or within thirty days thereafter. The City operates on a fiscal year beginning on July 1 and ending on June 30 of each calendar year. Late invoices are subject to rejection if no appropriated funds are available for their payment.
2. The invoice must be in the name of the Contractor unless the City has received and approved an assignment.
3. The City will not be responsible for any cost or expenses of operation of any kind associated with Contractor's provision of Services pursuant to this Contract, except as set out herein. Contractor shall be entitled to no fees, bonuses, contingent payments, or any other amount in connection with the Services to be rendered hereunder except as set out herein. The City shall have no obligation to reimburse, pay directly or otherwise satisfy any taxes or other expenses of the Contractor in connection with the performance of its obligations under this Contract except as stated herein. If Contractor is deemed not to be an independent contractor by any local, state, or federal governmental agency, Contractor agrees to indemnify and hold harmless the City for any and all fees, costs, and expenses, including, but not limited to, attorney's fees incurred thereby.

4. The Contractor shall submit a proper invoice detailing the Goods, Services, Insurance or Construction provided, in duplicate. Such invoice shall include a detailed breakdown of all charges and shall be based on completion of tasks or deliverables for the period of time being billed.
5. Invoices shall be submitted to the address shown on the purchase order.

**F. PAYMENT:**

1. In return for the Goods, Services, Construction and/or Insurance that are the subject of this Contract, and subject to the provision of this Contract relating to "Termination for Non-appropriation," the City shall compensate the Contractor within thirty (30) days after receipt of proper invoice for the amount of payment due or thirty (30) days after receipt of the Goods or Services, whichever is later.
2. The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provisions of the Contract or any modifications thereto. The City will not pay for any rejected deliverable.
3. With Construction contracts that provide for progress payments in installments based upon an estimated percentage of completion, the City shall retain 5% of the amount earned for work done and materials delivered as retainage, to be paid in the final payment to the Contractor.
4. Within seven days after receipt of amounts paid to the Contractor by the City for satisfactorily completed performance, the prime contractor agrees to:
  - a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under that contract; or
  - b. Notify the City and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment except for amounts properly retained as allowed under section 3 above.

If the Contractor after having received payment from the City fails to pay each subcontractor its proportionate share of the total payment, the Contractor shall be obligated to pay interest to each subcontractor on all amounts that remain unpaid after the seven days following receipt by the Contractor of payment from the City.

5. Unless otherwise provided under the terms of this Contract or by statute, interest shall accrue at a rate of one percent per month against the Contractor on any unpaid amounts owed to each subcontractor.

6. The Contractor shall include in each of 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.
7. A Contractor that is an individual must provide his or her social security number and a Contractor that is any form of business entity must provide its federal employer identification number on a completed W-9 "Request for Taxpayer Identification Number and Certification" form, to be mailed to the City of Manassas, Accounting Division's Office, 9027 Center Street, Room 303, Manassas, VA 20110. A copy of this form can be downloaded from <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. This information is required before payment can be made.

**IV. TERMINATION OF CONTRACT:**

**A. TERMINATION FOR DEFAULT:**

1. Either party may terminate this Contract, without further obligation, for the default of the other party.
2. With the exception of an emergency endangering life, safety, or the operation of the City government, a default will only exist after the party claiming default shall have provided notice and an opportunity to cure the default to the other party as follows:
  - a. A written Notice of Default shall be given at least ten business days before the date set for termination and shall set forth the grounds for claiming default of the other party and the steps demanded to cure the default.
  - b. If the party receiving the Notice of Default fails to cure the default before the end of the ten business day period then that party shall be in default under the terms of the Contract and the non-defaulting party shall have the right to terminate the Contract by sending a written Notice of Termination to the defaulting party.

**B. TERMINATION FOR CONVENIENCE:**

1. The City may terminate this Contract or any work or delivery required hereunder from time-to-time either in whole or in part, whenever the Contract Administrator, with the concurrence of the Purchasing Manager, determines that such termination is in the best interest of the City.
2. Termination may occur in whole or as to any discrete part of the Contract. A partial termination shall set forth the portions of the Contract which are terminated.

3. The effective date of the termination shall be three (3) days after issuance of a Notice of Termination signed by the Purchasing Manager and its mailing or delivery to the Contractor, or any later date specifically set forth in the Notice of Termination.

**C. TERMINATION FOR NON-APPROPRIATION:**

1. If funds are not appropriated for purposes of this Contract for any succeeding fiscal year subsequent to the one in which this Contract is entered into, then the City may terminate this Contract upon thirty (30) days written notice to the Contractor. The notice shall set forth the grounds for termination and its effective date.
2. If the City terminates for non-appropriation, the City shall be liable only for payments due through the effective date of termination.
3. Until the effective date of the termination, the Contractor shall continue to perform its duties under the Contract and is not excused from performance related to any portion of the Contract.

**D. CLAIMS UPON TERMINATION:**

1. Upon receipt of a Notice of Termination, the Contractor shall:
  - a. Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice of Termination;
  - b. Place no further orders with any subcontractors except as may be necessary to perform any portion of the Contract not subject to the Notice of Termination (i.e., in the case of partial termination);
  - c. Terminate all subcontractors except to the extent necessary to complete work which was not subject to the Notice of Termination (i.e., in the case of partial termination);
  - d. Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Contract Administrator and the Purchasing Manager; and
  - e. Use its best efforts to mitigate any damages which may be sustained by the Contractor or any of its subcontractors as a consequence of termination under this clause.
2. After complying with the foregoing provisions, the Contractor shall submit a termination claim within thirty days unless an extension is granted by the Contract Administrator. This termination claim shall document all amounts due under this provision.

- a. Upon receipt of the Contractor's termination claim, the Contract Administrator, with the approval of the Purchasing Manager, shall pay from the Using Department's budget the reasonable costs of termination, including a reasonable amount for profit on Services delivered or completed. In no event shall this amount be greater than the original Contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the Goods or Services not delivered, or those Goods, Services, or Insurance not provided, or Construction work not performed. The calculation of the amount to be paid the Contractor shall be documented and made a part of the Contract file.
- b. If the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Contract Administrator, with the approval of the Purchasing Manager, shall pay the Contractor from the Using Department's budget the amounts determined as follows, without duplicating any amount which may have already been paid under the preceding paragraph of this clause:
  - i. With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
    - Cost of the Goods delivered or work performed; and
    - The reasonable cost of settling and paying any claims as provided above; and
    - A sum as profit on work performed determined by the Contract Administrator and Purchasing Manager to be fair and reasonable.
  - ii. The total sum to be paid shall not exceed the original Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of Goods, Services, Construction or Insurance not terminated.
- c. If the Contractor is not satisfied with any payments which the Contract Administrator and Purchasing Manager determines to be due under this provision, the Contractor may make a claim in accordance Section 7 of City Policy.
- d. In no event shall Contractor be entitled to any profits if this Contract is terminated for Contractor's default, and sums otherwise due to Contractor shall be reduced by the amount of any damages incurred by the City as a result of Contractor's default.

3. The Contractor shall include similar provisions for termination in any subcontracts and shall require subcontractors to make reasonable efforts to mitigate damages if the Contract is terminated. Failure to include such provisions shall bar the Contractor from any recovery from the City whatsoever for loss or damage sustained by a subcontractor as a consequence of termination.

**V. STATUTORY REQUIREMENTS:**

**A. EMPLOYMENT DISCRIMINATION:**

In all contracts, regardless of contract amount, the Contractor will abide by the provisions of the Americans with Disabilities Act, and will require each subcontractor to do so. If this Contract is for a consideration in excess of Ten Thousand Dollars (\$10,000.00), then 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, color, sex, sexual orientation or gender identity, national origin, age, disability, status as a service disabled veteran, political affiliation, or other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination 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 section.
4. The Contractor will include the provisions of this Contract section in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

**B. ETHICS IN PUBLIC CONTRACTING:**

The provisions contained in Chapter 43, Article 6, Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act, as set forth in the 1950 Code of Virginia, as amended, apply to this Contract. The provisions of Article 6 of Chapter 43 supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interest Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

**C. DRUG-FREE WORKPLACE:**

During the performance of this Contract the Contractor agrees to:

1. Provide a Drug-Free Workplace for the Contractor's employees.
2. Post in conspicuous places, available to employees and applicants for employment a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.
3. State in all solicitations or advertisement for employees placed by or on behalf of the Contractor that the Contractor maintains a Drug-Free Workplace.
4. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00, or so that the provisions will be binding upon each subcontractor or vendor.

**D. FAITH-BASED ORGANIZATIONS:**

The City of Manassas in procuring Goods and Services, or in making disbursements pursuant to this section, shall not discriminate against a faith-based organization on the basis of the organization's religious character or impose conditions that restrict the religious character of the faith-based organization, except funds provided for expenditure pursuant to contracts with public bodies shall not be spent on religious worship, instruction, or proselytizing, or impair, diminish, or discourage the exercise of religious freedom by the recipients of such Goods, Services, or disbursement.

**E. FOREIGN AND DOMESTIC BUSINESSES AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH:**

1. A contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
2. A contractor organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this Contract. Notwithstanding any other provision of this Contract, the City may void any Contract with a business entity if the business entity fails to remain in compliance with this provision.

**F. LEGAL COMPLIANCE:**

1. The Contractor shall be solely responsible for complying with all applicable federal, state and municipal laws, codes and regulations during the performance of the Contract.
2. The Contractor has the responsibility to ensure that its forces and its subcontractors under this Contract comply with all applicable Occupational Safety and Health Administration (OSHA) requirements and all applicable State and City safety and occupational health standards. The Contractor is responsible for the safety of its employees. The Contractor has the sole responsibility and authority to prevent any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this Contract.
3. The Contractor agrees that it does not, and shall not during the performance of the Contract for Goods and Services, knowingly employ an unauthorized alien or aliens as defined in the Federal Immigration Reform and Control Act of 1986.

**VI. DISPUTES:**

**A. GOVERNING LAW:**

This Contract is governed by the law of the Commonwealth of Virginia, including but not limited to the Virginia Public Procurement Act (VPPA), Sections 2.2-4300 et seq. of the Code of Virginia (1950), as amended. This Contract is also governed by the applicable City Policies.

**B. HOLD HARMLESS:**

1. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City and its officers, agents, employees, community representatives, volunteers or others working on behalf of the City from any and all claims, judgments, suits, losses, damages, payments, costs, fines and/or fees levied against the City and expenses of every nature and description, including attorney's fees, arising out of, connected or associated with or resulting from the lack of performance or the negligent performance of work as described in this Contract, Contract Documents or any agreement that results from this Contract. Further, if the Contractor subcontracts for work, it will require in its subcontracts that each subcontractor indemnify, defend, and hold harmless the City and its officers, agents, employees and community representatives, from any and all claims and losses accruing or resulting from the negligent performance of work as described in any agreement that results from this Contract.



2. To the fullest extent permitted by law, the Contractor shall also indemnify, defend, and hold harmless the City and its officers, agents, employees, community representatives, volunteers or others working on behalf of the City against all costs, including reasonable attorney's fees, arising from liens encumbering the City's Property filed by subcontractors, sub-subcontractors, material suppliers, and all other persons and entities acting for and under the Contractor, and the Contractor shall immediately discharge or bond such liens off.
3. Virginia is a Dillon Rule state. Unless specifically permitted by statute, indemnification or any attempt to have the City hold others harmless is invalid and unenforceable as an impermissible waiver of the City's sovereign immunity which may create potential future debt in violation of Virginia Constitutional and statutory requirements. The City cannot waive its sovereign immunity.

**C. CONDITIONS PRECEDENT TO PURSUIT OF LEGAL REMEDIES:**

Before the Contractor may exercise any legal remedy it may have in relation to rights arising out of this Contract, it must comply fully and strictly with each provision of Section 7 of City Policy. The City does not have administrative appeals procedures under Virginia Code § 2.2-4365.

**D. VENUE:**

Any action brought under this Contract must be brought in the state courts for the City of Manassas and may not be removed to the Federal Court system. Contractor expressly waives any objection to venue or jurisdiction of the Prince William County Courts in Manassas, VA.

**E. LIMITATIONS ON ACTIONS:**

Any action brought under this Contract, except an action for breach of warranty, shall be brought within the shorter of the statutory limitations period and the period of three years from the date of final payment without any tolling of this statutory limitations period for any reason whatsoever.

**F. WAIVER OF JURY TRIAL:**

In any action brought under this Contract, the parties expressly waive their right to trial by jury and agree to submit all questions of fact to the judge as trier of fact.

**VII. GENERAL PROVISIONS:**

**A. TIME OF THE ESSENCE:**

Time shall be of the essence to this Contract, except where it is herein specifically provided to the contrary.

1. If the Contractor at any time finds that the schedule will not be met for any reason, the Contractor shall immediately provide written notice to the Contract Administrator setting forth all facts and circumstances related to the delay.
2. Where the Contractor is prevented from completing any part of the Work within the Contract Period due to abnormal weather conditions the Contract Period will be extended in an amount calculated as stated below if a Claim is made for extension in writing and provided to the City within the time frame and in the manner prescribed and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of the Contract Period under the Contract Documents.
3. Contractor acknowledges and agrees that adjustments in the Contract Period will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by Contractor; (ii) could not be limited or avoided by the Contractor's timely notice to the City of the delay or reasonable likelihood that a delay will occur; and (iii) is of a duration not less than one day. Such an adjustment of time shall be Contractor's sole and exclusive remedy for the delays described in this Section.
4. Actual adverse weather delay days must prevent work on critical activities outdoors for fifty percent (50%) or more of Contractor's scheduled workday in order to be counted. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. Where Contractor is prevented from completing any part of the Work within the Contract Period due to abnormal weather conditions, the Contract Period will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided herein. Abnormal weather conditions occur only if the total number of actual adverse weather days exceeds the standard for that month as shown in the following table:

<u>Jan</u>	<u>Feb</u>	<u>Mar</u>	<u>Apr</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug</u>	<u>Sep</u>	<u>Oct</u>	<u>Nov</u>	<u>Dec</u>
7	7	8	7	8	7	8	8	6	6	6	6

5. Upon commencement of on-site activities and continuing throughout construction, Contractor shall record daily the occurrence of adverse weather and resultant impact to normally scheduled work and within 30 days of the last day of any month (hereinafter referred to as the "Reporting Month"), Contractor shall submit a written adverse weather report, including copies of Contractor's daily weather reports and applicable climatologically data from the National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location, unless the City allows, in writing, an additional period of time for the submission of said report. Notwithstanding any other provisions, failure to submit the required written report within the time specified above shall be deemed to be and shall constitute a waiver

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by Contractor of any and all claims for delay due to adverse weather conditions occurring during said Reporting Month.

6. The City shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
7. Contractor shall not be entitled to an adjustment in Contract Price or Contract Period for delays within the control of Contractor. Delays attributable to and within the control of a subcontractor or supplier shall be deemed to be delays within the control of Contractor.

**B. INTERPRETATION AND MODIFICATION OF THE CONTRACT:**

1. This Contract, including its incorporated documents, contains the whole agreement between the parties as to its subject, and no prior or contemporaneous communications, representations, or agreements, written or verbal, may alter, add to, or contradict any provision in it. There are no promises, terms, conditions, or obligations related to the subject of this Contract other than those contained herein.
2. All modifications and changes to the Contract shall be in writing and signed by the Purchasing Manager.
3. If a Court of competent jurisdiction finds any provision of this Contract to be invalid, such ruling shall not invalidate the entire Contract but shall apply only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect to the maximum extent permitted by law.
4. The Contract Administrator, with the concurrence of the Purchasing Manager, shall have the authority to order changes in this Contract, which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a "Change Order" and signed by the City Manager, or Purchasing Manager.
  - a. Such orders shall be limited to reasonable changes in the supplies, Services to be performed or the time of performance; provided that the Contractor shall not be excused from performance under the changed Contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.
  - b. Contractor need not perform any work described in any Change Order unless it has received a written certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

- c. The Contractor shall make a demand for payment for completed changed work within 30 days of completion of Change Order, unless such time period is extended in writing, or unless the Contract Administrator requires submission of a cost proposal prior to the initiation of any changed work or Services.
- d. No claim for changes made by Change Order shall be considered if made after final payment in accordance with the Contract.

**C. EXAMINATION OF RECORDS:**

1. The Contractor agrees that the City or any duly authorized representative of the City may have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. This right shall expire on the third anniversary of the issuance of final payment under this Contract.
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 City or any duly authorized representative may have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of such subcontractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. This right expires on the third anniversary of the issuance of final payment to the subcontractor.

**D. ASSIGNMENT OF RIGHTS:**

1. Antitrust: By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the City all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular Goods or Services purchased or acquired by the City under said Contract.
2. Warranty: By entering into a Contract, the Contractor conveys, sells, assigns and transfers to the City all warranties related to Goods or Services provided to the City under this Contract.

IN TESTIMONY WHEREOF, the City of Manassas has caused its name to be hereunto subscribed pursuant to authority heretofore duly granted by the City Council of the City of Manassas; and

Contractor has caused its name to be hereunto subscribed by Contractor's Representative, and (if a Corporation) has caused its corporate seal to be duly affixed and attested by the person authorized to do so, signifying that it intends to be bound by this Contract.

CITY OF MANASSAS

By:



Authorized Official

James M. Falls, Purch Mgr.

Print Name and Title

CONTRACTOR

By:



Contractor's Representative

Rick Graham President

Print Name and Title