

AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the the Date the FW General Manager executes the Contract, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and **DAVIS INDUSTRIES, INC.**, hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

WITNESSETH:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

The Contractor shall provide disposal of scrap metal for recycling or beneficial use as specified and defined herein.

All goods and services provided shall be in accordance with the following, in order of precedence: this Agreement for Service (including all Exhibits, if applicable) assigned FW Contract Number 2024-023 ("Agreement" or "Contract"); the Contractor's Bid Submission dated February 16, 2024; and FW's Invitation to Bid (IFB) No. 23-003 dated January 17, 2024 (including all addenda, if applicable), (all of which are incorporated into this Contract by reference). In the event that the IFB or the Contractor's Bid Submission Form contradict or limit this Agreement for Service, this Agreement shall prevail.

No representations, arrangements, understandings or agreements relating to the subject matter exist amongst the parties except as expressed in this Agreement.

1.0 TERM OF CONTRACT AND ANNUAL RENEWALS

- A. The term of this Contract shall be from the date the FW General Manager executes the Contract through March 31, 2029, with one 5-year renewal option from April 1, 2029 through March 31, 2034.
- B. Renewal: The renewal option will be renewed at the then current rates, terms and conditions. Failure to renew by the expiration date of the then current Contract year will not automatically cancel the Contract. FW may retroactively renew the Contract at any time prior to the last day of the following Contract year providing that FW has not formally cancelled the Contract.

2.0 SPECIFICATIONS AND RELATED REQUIREMENTS

2.1 Background Information and General Requirements

- A. FW, the largest water utility in Virginia, has special waste generated by certain departments. The Chantilly Warehouse, Newington Warehouse, Murray Warehouse,

Griffith Treatment Plant, and Corbalis Treatment Plant require two roll-off bins at each location. The Contractor shall provide labor, equipment (including collection bins), and supplies necessary to collect, package, transport, and process the materials in response to FW Surplus Orders.

- B. From time to time, FW may deliver scrap metal to Contractor instead of calling Contractor for a roll-off. The Contractor will only be required to collect the materials generated at each facility, as requested by FW Warehouse Supervisor.

2.2 Typical Metals For Recycling or Beneficial Use

Listed below, by site, are non-exclusive examples of typical materials included in scope of work. The examples listed below are special waste generated by FW facilities. Other types of special waste may be generated by FW at anytime during a Contract term. The Contractor, with proper FW disclosure to the Contractor of the waste to be removed and disposed, shall perform the recycling or beneficial use services as requested by FW.

A. Chantilly Warehouse

1. Special Waste

- Brass
- Steel
- Aluminum
- Copper
- Cast
- Iron
- Miscellaneous

B. Newington Warehouse

1. Special Waste

- Metal
- Cast
- Copper
- Brass
- Miscellaneous

C. Murray Warehouse

1. Special Waste

- Cast
- Brass
- Steel

- Aluminum
- Copper
- Iron
- Miscellaneous

D. Griffith Treatment Plant

1. Special Waste

- Copper
- Brass
- Metal Wire
- Miscellaneous

E. Corbalis Treatment Plant

1. Special Waste

- Copper
- Brass
- Metal Wire
- Miscellaneous

2.3 Scope Of Work

- A. The Contractor shall provide services for the removal or receipt of special waste for recycling or beneficial use on an as needed basis. The quantities specified herein are estimates based upon past usage and projected demand for the next Contract term and shall not be construed to represent an amount which FW shall be obligated to exercise. The exact roll off amounts may be more or less, and shall be subject to FW's actual needs. The Contractor acknowledges and agrees that FW will only be responsible for the amounts actually exercised.
- B. The Contractor shall provide all labor, equipment, licenses, insurance, and all other usual and customary supplies necessary in performance of the work, to perform proper transportation, handling, and disposal of all categories of special waste included in this scope of work.
- C. Costs to perform the service, including general and administrative, overhead, and profit shall be Contractor's responsibility. No payments will be made to Contractor by FW for this Contract, wherein all payments inure to the benefit of FW.
- D. FW reserves the right to conduct a site visit to the Contractor's collection facility or facilities, at anytime and particularly at each Contractor weighing of FW special waste for FW staff verification of Contractor weighing.

- E. All Contractor employees shall wear Contractor supplied personal protective equipment (PPE) at all times and appropriate to the service being performed.
- F. All Contractor facilities, personnel, equipment, and vehicles (owned or leased) shall possess and maintain current certifications, licenses and permits required to handle, clean up, transport, and dispose of special waste included in the Work. All vehicle inspection stickers and DOT or other applicable jurisdiction issued permits shall be displayed and clearly visible in any Contractor vehicle utilized in the performance of the Work. Failure to maintain all required current certifications, licenses and permits may be grounds for termination of the resultant Contract for cause. Examples of required licenses and certifications include, but are not limited to:
 - 1. Current registration, inspection sticker, if applicable, and DOT or other applicable approving jurisdiction permit.

2.4 Response and Performance Times

- A. Contractor shall collect and receive special waste in full within 48 hours (2 FW working days) of receipt of an FW Surplus Order. Work and scheduling excludes Saturdays, Sundays and federally-observed holidays. Collections shall be made during FW Warehouse or Plant hours. Other hours may be made if agreed to by both FW and Contractor in writing for particular FW Surplus Order.

2.5 Delays

- A. **By the Contractor:** After prior written warning, which may include but is not limited to informal email notification, to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by any means available to FW, including but not limited to, recovery any additional costs, lost funds and/or related expenses caused to FW by the Contractor delay. This is not a limitation of FW's legal rights to recover damages due to Contractor default in any other way.
- B. **By FW:** The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the action or inaction of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension equal to the documented amount of time the Contractor was prevented from performing work. The Contractor shall not be eligible for damages as a result of FW delays.

2.6 Contractor Responsibilities

- A. The Contractor shall provide the requested recycling and/or material treatment/disposal services according to industry best management practices to reuse, recycle, or properly dispose of materials in accordance with all applicable federal, state, and local regulations.

- B. The Contractor shall ensure that all employees are properly trained according to federal, state, and local laws and regulations with respect to the material they are handling. If, at any time Fairfax Water Contract Administrator/Designee determines that proper safety measures are not being employed, the Contractor will be stopped from working, without any liability upon Fairfax Water, and can resume work only at such time as conditions are remedied to the satisfaction of Fairfax Water Contract Administrator or other Fairfax Water designee.
- C. The Contractor shall provide FW with contact information (name, title, address, phone, cell phone, and email) for the local operations supervisor.
- D. The Contractor shall provide a receipt for each load of materials removed from County FW property to an FW employee who independently observes Contractor weighing at Contractor property. Receipt shall indicate the date, time, facility, and the quantity and type of materials removed. All records shall accurately portray the described the materials removed from County FW locations, which shall also be included with the invoicereceipt. Invoices Receipts submitted without a signature of independent observation by an the required information/documentationFW employee will not be processed and any payments due to the Contractor will be denied. Failure to comply with this provision may result in Contract termination.
- E. The Contractor assumes ownership, control and responsibility of all materials removed from County FW facilities at the point in which the materials are loaded into the Contractor (or subContractor's) collection vehicle.
- F. The Contractor is responsible for all spills and discharges from its collection vehicles and equipment while performing. Contractor personnel shall promptly take the appropriate actions to contain spills (hydraulic fluid, fuel, recyclable materials, etc.).
- G. All FW Surplus Orders are to be sent directly to Contractor by e-mail. Surplus Orders shall include the FW Contract number.
- H. Contractor payments to FW shall be Net 30 from the date of Contractor receipt of metal at Contractor premises.
- I. No payments will be made by FW to the Contractor.
- J. The Contractor shall submit receipts for metal received, rolled-off and accepted, with original receipt in-person to the FW employee who independently verified weighing at time of Contractor acceptance, and with a scanned copy of the original receipt directly to the Finance Department, to the attention of Accounts Payable, by email. Receipts

shall show FW Contract number, shall include proof of the then current AMM index average monthly price, and are subject to review and approval by FW.

- K. All prices are for Commodities picked up F.O.B. Origin or FW delivery to Contractor and shall represent the entire price to FW. Title for such Commodities shall pass to Contractor upon receipt and acceptance thereof at Contractor's designated facility.
- L. Any transaction for the purchase and sale of any Commodity shall be effected by FW's issuance to the Contractor of a Surplus Order, in which event the Contractor covenants and agrees to Roll-off or to receive all Commodities described therein in strict accordance with the terms and conditions of such Surplus Order and the other documents that together constitute the Contract.
- M. If the Contractor is declared to be in default, FW will be eligible for full and immediate payment for all FW invoices sent to the Contractor.
- N. Homeland Security Advisory System: If the Homeland Security Advisor System places the water / waste water industry in Codes Orange or Red, all Roll-offs shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each Roll-off leaves the Contractor's yard, the Warehouse or Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before Roll-off is allowed on site. Failure to follow these procedures may result in a refusal of the Roll-off at the Contractor's risk and expense.

3. STANDARD TERMS AND CONDITIONS

3.1 Authorization to do Business in Virginia

Each bidder that is organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Virginia Code shall include with its bid the identification number issued to it by the Virginia State Corporation Commission. Any bidder that is not authorized to transact business in Virginia as a foreign entity under Title 13.1 or title 50 of the Virginia Code or as otherwise required by law shall include in its bid a statement describing why the bidder is not required to be so authorized.

3.2 Drug-Free Workplace

During the term of the MSA, CONTRACTOR agrees to (i) provide a drug-free workplace for CONTRACTOR's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in CONTRACTOR's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR that

CONTRACTOR maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subContract or purchase order of over \$10,000, so that the provisions will be binding upon each subContractor, subconsultant, or vendor. For purposes hereof, a "drug-free workplace" shall mean the site for the performance of the Work contemplated hereby.

3.3 Non-Discrimination by CONTRACTOR

CONTRACTOR covenants and agrees as follows:

(a) During the Term, CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, 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 CONTRACTOR. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) CONTRACTOR, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, will state that CONTRACTOR is an equal opportunity employer.

(c) Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this Section.

CONTRACTOR will include the provisions of the foregoing Sections 2(a), (b), and (c) in every subContract, subconsulting agreement, and purchase order over \$10,000, in order that the provisions above will be binding upon each subContractor, subconsultant, and vendor.

3.4 Non-Discrimination by FW

FW represents and warrants that it does not discriminate against faith-based organizations.

3.5 No Employment of Unauthorized Aliens

CONTRACTOR hereby covenants and agrees that it does not, and shall not during the term of this MSA, knowingly employ an unauthorized alien (as such term is defined in the federal Immigration Reform and Control Act of 1986).

3.6 Payment to SubContractors and Subconsultants

Within seven days after receipt of each payment for services provided hereunder, CONTRACTOR shall:

(a) pay each subContractor and/or subconsultant an amount equal to the percentage of the Services attributable to such subContractor or subconsultant; or

(b) notify FW and each such subContractor and/or subconsultant in writing of the intention to withhold all or part of the amounts due such subContractor or subconsultant and state the reason for such nonpayment.

CONTRACTOR shall pay interest on amounts owed to any subContractor and/or subconsultant which remain unpaid seven days after CONTRACTOR's receipt of payment for services provided hereunder, provided, however, that amounts owed any subContractor and/or subconsultant which have been withheld properly pursuant to this Section, shall not accrue interest. Interest on amounts due any subContractor and/or subconsultant and unpaid shall accrue at the rate of one-half of one percent (1%) per month; provided, however that CONTRACTOR's obligation to pay interest hereunder shall in no event be construed to be an obligation of FW. No Contract modification shall be made, and no cost reimbursement claim shall be submitted, for purposes of reimbursement for the interest charge. CONTRACTOR shall include in each of its subContracts a provision requiring each of its subContractors and/or subconsultants to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier subContractor and/or subconsultant.

3.7 Authorization to Transact Business

CONTRACTOR hereby represents and warrants as follows: (a) it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law; and (b) it shall not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia, if so required under Title 13.1 or Title 50 of the Virginia Code, to be revoked or cancelled at any time during the term of this Agreement.

3.8 Right of Audit

CONTRACTOR covenants and agrees to retain all books, records and other documents (electronic or otherwise) relating this MSA (the "Project Records") for at least five (5) years after final payment hereunder. Project Records will be deemed to exclude books, records and other documents if and to the extent they are protected by the attorney-client privilege. FW and its authorized agents (the "Auditing Parties") shall have full access to and the right to examine the Project Records upon written request at any time, and from time to time, during the term of this MSA and for a period of five (5) years thereafter. CONTRACTOR hereby covenants and agrees that, within 10 days after it receives written notice from an Auditing Party, it will make the Project Documents available for inspection and copying by such Auding Party during CONTRACTOR's regular business hours, with copies being provided at a reasonable cost payable by the Auditing Party. Any failure on the part of CONTRACTOR to comply with the provisions of this Section will constitute a breach of the MSA and, regardless of whether such failure occurs during the term of the MSA, or within the five-year period commencing on the date of final payment hereunder, will constitute sufficient grounds for debarment of CONTRACTOR. CONTRACTOR hereby agrees that it will pay and be

responsible for all costs and expenses (including court costs and attorneys' fees) incurred by an Auditing Party in enforcing this provision.

3.9 Dispute Resolution Process

Contractual claims, whether for money or for other relief, will be submitted in writing to FW not later than 60 days after final payment; provided however, that written notice of CONTRACTOR's intention to file such claim must:

- a. be delivered to the attention of FW's Procurement Manager, at the address shown in the notice provisions of the MSA, not later than five days after the occurrence or of the beginning of the Work upon which the claim is based; and
- b. contain a reasonably detailed description of the basis of the claim.

CONTRACTOR's failure to comply with the foregoing requirements will result in a waiver of the claim. FW will make a written decision upon any such claim within 60 days after submittal of the claim. CONTRACTOR will not institute legal action prior to receipt of FW's decision on the claim unless FW fails to render such decision within 90 days after submittal of the claim. The decision of FW will be final, unless CONTRACTOR initiates legal action as provided in § 2.2-4364 of the Virginia Code. Failure of FW to render a decision within 90 days will not result in CONTRACTOR being awarded the relief claimed, nor will it result in any other relief or penalty. The sole result of FW's failure to render a decision within the time allotted will be CONTRACTOR's right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Virginia Code has been established for Contractual claims under this MSA.

3.10 Antitrust

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to FW 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 FW.

3.11 Arrearage

By submitting a Bid in response to this solicitation, the individual or firm submitting the bid shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits. Bidder further agrees that it shall make diligent efforts to avoid becoming in arrears during the Term of any Contract awarded hereunder.

3.12 Assignment of Interest

The Contractor shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.

3.13 Cancellation

FW may cancel this solicitation at any time and for any reason prior to Contract award.

3.14 Compliance with Laws, Regulations and Codes

The Bidder hereby represents and warrants that:

- A. It is qualified and properly licensed to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

3.15 Contractor's Responsibilities

- A. The Contractor shall be responsible for all products and/or services as required by this IFB. The use of subContractors is prohibited unless:
 - 2. A request to include a subContractor is included in the bid and,
 - 3. The Bidder receives written approval to use a subContractor prior to, or as part of the formal Contract between the parties.
- B. Even when properly authorized by FW, the use of a subContractor does not relieve the Contractor of liability under the Contract.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subContractor's failure to protect such facilities and utilities.
- D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its SubContractor(s). Replacements will be of equal or better quality than the property damaged property, and all such work must be approved by FW Project Manager.

3.16 Debarment Status

By submitting a Bid in response to this solicitation, each Bidder certifies that it is not currently debarred by the federal government, the Commonwealth of Virginia, or any agency or department thereof from submitting a bid or proposal in connection with any procurement project and that it is not an agent of any person or entity that currently is so debarred.

3.17 Duration of Bids

Bids shall be valid for a minimum of 90 days following the deadline for submitting bids. If an award is not made during that period, all bids shall be automatically extended for another 90 days. Bids will be automatically renewed until such time as either an award is made or proper notice is given to FW of Bidder's intent to withdraw its bid. Bids may only be withdrawn by submitting written notice at least seven days before the expiration of the then current 90-day period.

3.18 Ethics in Public Contracting

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a Contract resulting from this solicitation, are proper and in accordance therewith.

3.19 Examination of Records

Bidder agrees that in any resulting Contract, either FW or its duly authorized representative shall 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 any resulting Contract. This obligation shall expire five years after the final payment for the final service performed as a result of any and all Contract(s) awarded pursuant to this solicitation, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

3.20 Familiarity with Specifications

Each Bidder shall bear responsibility for thoroughly examining this solicitation in its entirety. In the event that Bidder has any questions or comments regarding the proper meaning or intent of any aspect of this solicitation, then such Bidder shall submit all such questions and comments in writing to the Procurement Contact identified on the cover sheet of this solicitation.

The submission by a Bidder of a Bid in response to this solicitation shall be deemed to constitute a representation on the part of such Bidder that it has thoroughly examined this

solicitation and has submitted any and all questions and comments it may have regarding the meaning or interpretation of this solicitation to Fairfax Water in the manner prescribed herein.

3.21 Formation of Contract

- A. The words "Contract" and "Purchase Order" are used interchangeably unless the context otherwise plainly requires. The documents comprising the Contract shall be accorded the following order of precedence:
1. Any Amendment;
 2. Any Addenda to the IFB;
 3. This IFB (including all Appendices and Attachments hereto); and
 4. The Bidder's completed Bid Tabulation Form (including any drawings and submittals).
- B. The Contract to be entered into as a result of this IFB shall be by and between the Bidder as Contractor and FW. It shall include the following items, which are listed in order of precedence:
1. The fully executed Contract between the parties,
 2. The IFB and any Addenda to the IFB,
 3. The Bidder's response to the IFB (including any drawings and submittals), and
 4. All correspondence between the parties regarding this IFB.
- C. Anything called for by one of the Contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract documents shall have the intended effect.

3.22 Governing Law; Venue; Waiver of Jury Trial

Notwithstanding any provision to the contrary, this solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

3.23 Incorporation by Reference

This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the solicitation. By submitting a bid in response to this solicitation, all Bidders acknowledge the VPPA and agree to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website:

<http://www.eva.virginia.gov/pages/eva-vppa.htm>

3.24 Indemnification and Responsibility for Claims and Liability

With respect to any Contract that results from this solicitation, Bidder is bound by the following:

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subContractors under this Contract.
- B. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subContractors in the event that a suit or action of any character is brought by any person not party to the Contract, against the Contractor or its subContractors as a result of or relating to the Contractor's obligations under this Contract.
- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subContractors as a result of or relating to the Contractor's obligations under this Contract.
- D. The Contractor shall pay all royalties and license fees necessary for performance of the Contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting Contract and shall save FW harmless from any loss, including Attorneys' fees arising out of any such claim.

3.25 Precedence of Terms

These General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

3.26 Taxes

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW's tax identification number is 54-6025290.

3.27 Termination of Contract

- A. For Cause. In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the

requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.

If, after issuance of a notice of termination under this Section it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties shall be the same as if the notice of termination had been delivered under the provisions of subsection B (termination for convenience) hereof; provided, however, that the Contractor in such event shall be deemed to have received seven days prior written notice of such termination. Any compensation due the Contractor pursuant to subsection B shall be offset by the cost to FW of remedying the default by the Contractor. The Contractor shall in no event be entitled to receive any consequential damages or any anticipated profits with respect to Commodities not yet furnished to, and accepted by, FW as of the effective date of any such termination.

- B. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subContract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

3.28 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, Contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

3.29 Warranty

- A. The Contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the Contract shall be new, in first class condition, and in accordance with the Contract documents. The Contractor further warrants that all workmanship shall be of the highest quality and in accordance with Contract documents and shall be performed by persons qualified at their respective trades.

- B. Materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of 12 months following date of final acceptance. Should any defect be noted by the FW, the Project Manager will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) FW does not require replacement or correction, but an equitable adjustment to the Contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to FW and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the Contract price.
- C. Work not conforming to these warranties shall be considered defective.
- D. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor's other guarantees or obligations in this Contract.
- A. NOTE: Any implied warranties, including but not limited to the warranty for "Merchantability and Fitness for A Particular Purpose" cannot be waived and are a mandatory part of this solicitation and any ensuing Contract.

3.30 Immigration Reform and Control Act of 1986

By entering 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, which prohibits employment of illegal aliens.

3.31 Insurance

- A. In addition to the mandatory insurance requirements listed in this Section and, at the request of FW, any Bidder may be required to provide a list of all insurance claims made against it within the past 36 months. FW reserves the right to reject any bid if in FW's opinion the amount or number of claims is deemed to be excessive. A Bidder's failure to comply with this requirement may result in rejection of its bid. If no claims have been made, then the Bidder shall so state in its bid. Fairfax Water may require such information from the Contractor as it deems necessary to assess the Contractor's financial ability to pay any deductibles with respect to the insurance policies required hereunder.
- B. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.

- C. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subContractors regarding any matter resulting from or related to the Contractor's obligations under the Contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this Contract.
- D. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract.
- E. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:
 - 1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
 - 2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

◆ General Aggregate Limit (Other than Products-Completed Operations)	\$1,000,000
◆ Products-Completed Operations Aggregate Limit	\$ 500,000
◆ Personal & Advertising Injury Limit	\$ 500,000
◆ Each Occurrence Limit	\$ 500,000
For Construction Contracts:	
◆ Directors & Officers – Errors & Omissions	\$2,000,000
- F. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least \$500,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.
- G. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.


4.0 COMPENSATION

Compensation for the services defined herein shall be as shown on the attached Exhibit I.

[SIGNATURE PAGE FOLLOWS ON NEXT PAGE]

FAIRFAX COUNTY WATER AUTHORITY
8570 Executive Park Avenue
Fairfax, Virginia 22031

Procurement Contact:
Daniel W. Gardner
Phone: 703-289-6247
Email: dgardner2@fairfaxwater.org

By: 
Name: Jamie Bain Hedges, P.E.
Title: General Manager
Date: 3/14/24

DAVIS INDUSTRIES, INC.
9920 Richmond Highway
Lorton, Virginia 22079

Vendor Contact:
James LoBianco
Phone: 703-550-7402
Email: jim@davisindustries.com

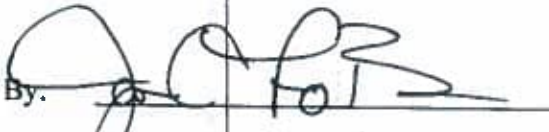
By: 
Name: JAMES LOBIANCO
Title: VICE PRESIDENT
Date: 3/14/2024

EXHIBIT I: COMPENSATION

Compensation shall be as in this Exhibit I and per the Compensation Schedules on Page 2:

Contractor shall pay to FW “a percent” of the published AMM index price as described below to be paid to FW for scrap metal according to two schedules: Schedule 1 shall be removed from FW roll-off locations designated in Bid Item No. 1, and Schedule 2 will be delivered by FW to Contractor. The percentages below are a percentage of the stated index; for example, a Contractor who bid 50% in order to bid half the AMM index price as a price to be paid to FW by the Bidder. Continuing the example, if the AMM index price were \$10.00 per unit for a then current monthly average published price at the time of an FW Surplus Order, and Contractor bid 50%, the Contractor shall pay at a fixed price \$5.00 per unit to FW for that FW Surplus Order. Lastly in this example, if during the five-year fixed contract, the AMM index pricing were to decrease from \$10.00 to \$5.00 in the then current monthly average published price at the time of an FW Surplus Order, and Contractor had bid 50%, the Contractor shall pay a contracted fixed price \$2.50 per unit to FW. No money will be paid by FW to the Contractor for this service under the awarded Contract.

1. Schedule 1: Payment to FW for scrap metal collected at Fairfax Water roll-off locations, designated in Bid Item No. 1, shall be calculated utilizing the current AMM publication (current publication in effect at the time of collection) monthly average published price for “shredded auto scrap” grade as shown in the North America Ferrous Scrap, Shredded auto scrap assessment, ISRI Code: 211, an index formerly known as the American Metals Market (AMM) Scrap Iron and Steel Prices (Consumer Buying Prices), for the Philadelphia region. Contractor shall purchase at Contractor expense access to the AMM data through FastMarkets for Metals and mining market participants. In the event that the commodity is unlisted by the AMM, FW and the Contractor shall mutually agree on an alternate published index.
2. Schedule 2: Payment to FW for all other ferrous or nonferrous scrap metal delivered to the Contractor’s facility by FW shall be based on a percentage most recent published AMM publication (current publication in effect at the time of delivery), monthly average published price for “shredded auto scrap” grade as shown in the North America Ferrous Scrap, Shredded auto scrap assessment, ISRI Code: 211, an index formerly known as the American Metals Market (AMM) Scrap Iron and Steel Prices (Consumer Buying Prices), for the Philadelphia region. Contractor shall purchase at Contractor expense access to the AMM data through FastMarkets for Metals and mining market participants. In the event that the commodity is unlisted by the AMM, FW and the Contractor shall mutually agree on an alternate published index.
3. Questions regarding the grade of scrap metal being delivered shall be resolved using the current edition of the ISRI Scrap Specification Circular. The Scrap Specifications Circular provides guidelines for buying and selling a variety of processed scrap commodities, including ferrous, nonferrous, paper, plastics, electronics, rubber, and glass. The Institute of Scrap Recycling Industries, Inc. is located at 1250 H Street, NW Suite 400 Washington, DC 20005.
4. The terms “Shredded Auto Scrap” is being used as an index only, and it is not necessarily descriptive of the ferrous and nonferrous scrap metal being sold.

COMPENSATION SCHEDULES

Schedules of Sale of Metal	Percent Paid By Contractor To FW of AMM Index
Schedule 1: Payment for Scrap Metal Collected from FW locations by Contractor	<u>37</u> % of North America Ferrous Scrap, Shredded auto scrap, for the Philadelphia region.
Schedule 2.a: Payment for Mixed Scrap Metal Delivered to Contractor by FW	<u>42</u> % of North America Ferrous Scrap, Shredded auto scrap, for the Philadelphia region.
Schedule 2.b: Payment for Specific Grades of Scrap Metal Delivered to Contractor by FW	<u>65</u> % of AMM ALL other grades of listed scrap metal for North America region.

Contractor Address
For Delivery
and
Weighing:

9920 Richmond Highway,
Lorton, VA 22079
