



FAIRFAX COUNTY WATER AUTHORITY
8570 Executive Park Avenue, Fairfax, Virginia 22031-2218
www.fairfaxwater.org

Agreement

Contract Title: Removal of Residuals

This Contract 2024-082 is made and entered into this 26 day of August 2024, the date the Agreement is fully executed by Fairfax County Water Authority, a political subdivision of the Commonwealth of Virginia, operating as Fairfax Water ("FW"), and Rising Sun., Inc., ("Contractor"), whose address is: 11188 Bears Den Road, Marshall, Virginia 20115.

In consideration of the mutual stipulations, agreements and covenants contained herein, the parties hereby agree as follows:

1. **Scope of Work:**

The Scope of Work for this Contract generally is described as to provide as requested by FW the goods and services necessary for Removal of Residuals ("the Work"), as set forth in greater detail in Attachment A, Specifications & Scope of Work.

2. **Contract Price:**

The Contract Price shall be as set forth in Attachment B, Pricing Schedule.

FW will not compensate the Contractor for any Work beyond that included in Attachment B unless the additional Work is covered by a written Amendment to this Contract.

The Contract Prices set forth in Attachment B include all costs, expenses, including reimbursable expenses, to provide the Work described in this Contract.

3. **Contract Documents:**

The documents which form the entire Contract between FW and the Contractor ("Contract Documents") are as defined either in this Contract or in the Invitation for Bid, and are as set forth below.

3.1. In the case of a conflict, the order of precedence shall be as follows:

- 3.1.1. Agreement and all modifications properly incorporated in the Agreement
- 3.1.2. Attachment A – Specifications & Scope of Work
- 3.1.3. Attachment B – Pricing Schedule
- 3.1.4. Attachment C – Standard Terms and Conditions
- 3.1.5. Attachment D – Special Terms and Conditions
- 3.1.6. Attachment E – Certificate(s) of Insurance
- 3.1.7. IFB/Associated Documents

- 3.2. All provisions required by law to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.
- 3.3. The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing call such conflict, error, ambiguity or discrepancy to the attention of the Owner before proceeding with the Work affected thereby. The Owner will promptly resolve the matter in writing. Work done by the Contractor after such conflicts, errors, ambiguities or discrepancies are discovered, or in the exercise of reasonable care reasonably should have been discovered, prior to written resolution thereof by the Owner shall be done at the Contractor's expense and risk. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- 3.4. The Contractor will be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.
4. **Definitions:**
All words and terms shall have the meanings and terms assigned to them in the Contract Documents, unless a different meaning is clear from the context.
5. **Contract Term:**
 - 5.1. The initial term of this Contract shall commence on the 1st day of October, 2024, and expiring on the 30th day of September, 2025, ('Initial Contract Term'), unless otherwise stated as provided in the Contract Documents.
 - 5.2. This Contract may be renewed for a term not to exceed one (1) year ('Renewal Contract Term') by written Notice given by FW at any time prior to 30 calendar days after expiration of the preceding Initial Contract Term or Renewal Contract Term. No representative of FW has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein. FW, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed four (4) additional one-year periods at the same terms and conditions. If funding is not available to complete orders during the Initial Contract Term and the four Renewal Contract Terms, FW reserves the right to renew the Contract until all orders have been received.
 - 5.3. Unless directed otherwise by FW, any Work in progress at the time of expiration of a Contract term may continue and be completed under the terms of the Contract in existence at the time the Purchase Order for the Work was issued, but must be completed

no later than six (6) months following expiration of the Contract term in which the Purchase Order was issued.

6. Contract Price Adjustment:

- 6.1. The Contractor agrees that prices shall remain firm for the Initial Contract Term. If consideration is to be given to adjusting the price after the Initial Contract Term or a Renewal Contract Term, the price may be adjusted only upon approval of a written request to the Procurement Manager. Upon receipt of the Contractor's request, FW shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor. Any price adjustment agreed to shall take place only in accordance with the schedule defined above.
- 6.2. Any annual increase in prices or rates shall be limited to the most recently published Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Arlington-Alexandria (unadjusted for seasonal changes) for the 12-month period ending 90 calendar days prior to the end of the then current contract year. The CPI-U for Washington-Arlington-Alexandria (unadjusted for seasonal changes) is the default index for the term of the Contract.
- 6.3. Any request for Contract price increases must be submitted at least 60 calendar days prior to the end of the then current term of Contract.
- 6.4. Issuance of a written renewal document and/or Purchase Order for the Renewal Contract Term(s) will constitute notice of renewal. 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 Renewal Contract Term providing that FW has not formally canceled the Contract.
- 6.5. Negative BLS index: If the agreed upon index is a negative number the Contractor shall reduce Contract rates by the same amount for the Renewal Contract Term.

7. Non-Appropriation:

All funds for payments by FW under any Contract awarded are subject to the availability of an annual appropriation for this purpose by FW. In the event of non-appropriation of funds by the FW for the Work provided under the Contract, FW will terminate the Contract, without termination charge or other liability to FW, on the last day of the then current fiscal year or when the appropriation made for the then current year for the Work covered by this Contract is spent, whichever event occurs first. FW will endeavor to provide reasonable Notice of such termination, but no formal notice of such termination is required of FW, and FW shall not order any Work to be provided after such termination date.

8. Right to Terminate Contract:

FW has the right to terminate this Contract for convenience at any time, or for default, all pursuant to the provisions of the Standard Terms and Conditions.

9. Direction to Proceed:

- 9.1. For Work to be performed by Contractor under this Contract, the Procurement Department will issue a Purchase Order. The Purchase Order will define the location of the Work to be performed and will define or, where specific definition cannot be provided, will estimate, the scope of the Work to be performed, the dates within which that Work is to be performed, and the price for that Work (collectively "Purchase Order

Work”). Contractor shall not commence any Work until a written Purchase Order has been issued by the Procurement Department, and if it does so FW will be under no obligation to make payment for any Work performed prior to the issuance of the required Purchase Order. No employee or agent of FW other than the Procurement Department, or properly authorized designee, has authority to make any purchases or otherwise bind FW contractually. If a Purchase Order is issued by anyone other than the Procurement Department, it shall be the responsibility of the Contractor to confirm the authority of that person to bind FW. Provided, however, if the Contractor has received from the Procurement Manager prior written confirmation of a person’s authority to bind FW, the Contractor may rely upon all Purchase Orders issued by that person within the scope of the stated authority as authorized.

9.2. Notwithstanding the foregoing, if the circumstances are such that there is not sufficient time for issuance of a Purchase Order, FW through the Procurement Manager, or authorized designee, may direct the Contractor to proceed by less formal writing or electronic communication, to be replaced by a Purchase Order by 5:00 P.M. on the next regular FW working day following issuance of such FW directive. Further, if emergency conditions exist which necessitate that the Contractor act to avoid or mitigate damage to person or property, the Contractor shall proceed and give written Notice to FW such emergency Work by 5:00 P.M. on the next regular FW working day following commencement of such emergency Work.

10. **Estimated Quantities: No Guaranteed Minimum:**

During the Initial Contract Term or any Renewal Contract Term, the Contractor shall furnish all of the Work described in the Contract Documents. The Contractor understands and agrees that there are no guaranteed minimum purchases and that FW has no obligation to the Contractor if no, or fewer, items or Work than any quantities estimated are required or requested by FW. Any quantities which are included in the Contract are the reasonable present expectations of those who are planning for FW for the term of Contract. The amount is only an estimate and the Contractor understands and agrees that FW is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that FW may require Work in excess of the estimated annual Contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract.

11. **Payment Procedures:**

Contractor shall submit invoices for its Work, and such invoices will be processed by FW, all in accordance with the provisions of the Standard Terms and Conditions.

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.

13. **Notices:**

Unless otherwise provided herein, all notices and other communications hereunder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

To the Contractor:

Ron Merzlak
3703 Cook Boulevard
Chesapeake, Virginia 23323

To FW:

Elizabeth B. Dooley, CPPO, CPPB
Manager, Procurement
8570 Executive Park Avenue
Fairfax, Virginia 22031

14. **Governing Law; Venue, Waiver of Jury Trial:**

This 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.

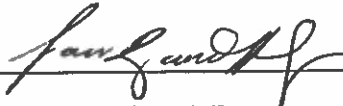
15. **Binding Agreement:**

FW and the Contractor each binds itself, its successors and assigns to the other, its successors and assigns, in respect of all covenants, terms, conditions and obligations contained in each of the Contract Documents.

Signatures Appears on Following Page


Fairfax County Water Authority
8570 Executive Park Avenue
Fairfax, Virginia 22031

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

By: 
Name: Jamie Bain Hedges, P.E.
Title: General Manager
Date: 8/26/2024

Rising Sun Inc.
11188 Bears Den Road
Marshall, Virginia 20115

Contractor Contact:
Ron Merzlak
Phone: 540-270-1693
Email: ron@risingsuninc.com

By: 
Name: RON MERZLAK
Title: PRES.
Date: 8/23/24

Attachments:

Attachment A	Specifications & Scope of Work
Attachment B	Pricing Schedule
Attachment C	Standard Terms and Conditions
Attachment D	Special Terms and Conditions
Attachment E	Certificate(s) of Insurance

Contract 2024-082
Attachment A – Specifications & Scope of Work

1 SPECIFICATIONS & SCOPE OF WORK

1.1 Overview

The removal of residuals program shall accommodate dewatered residuals with various quantities and combinations of silt, alum, polyaluminum chloride, polymer, powdered activated carbon (PAC) and potassium permanganate. Dewatered residuals at the Corbalis Water Treatment Plant (Plant) are mainly river silt with alum or polyaluminum chloride added as a coagulant. The settled residuals are dewatered using polymer as a conditioner. De-watered residuals shall be disposed of by land application or other approved method in accordance with all local, state and federal regulations. Land application disposal site(s) and all necessary permits and approvals relating to land application on those sites shall be obtained by the Contractor in accordance with all local, state and federal regulations.

A. The estimated characteristics of the dewatered residuals are summarized here:

1. Polymer Conditioned Residuals

Total residuals content by weight	15 – 40%
Calcium carbonate equivalency	0 – 1%
Aluminum	3 – 9%
pH	7 – 8%

2. Dewatered residuals which contain Powdered Activated Carbon (PAC) can be expected to be black in color but will have the same general characteristics as the polymer conditioned residuals listed above.

3. The characteristics referenced above are expected to be typical of the residuals to be disposed of by land application. However, FW does not guarantee that all residuals will meet all of the quantities or characteristics listed herein. The Contractor shall be responsible for determining the actual content and characteristics of the residuals.

4. Estimated Residuals Quantities:

- i. It is estimated that the average residuals quantity produced by the Plant will range from 0 to 150 wet tons per day (2,000 lbs./ton) during the Contract period. The maximum annual quantity is estimated to be 20,000 wet tons.
- ii. It is estimated that the average cake solids content for final blended residuals will be approximately 25%.

1.2 Specifications & Scope of Work

The Contractor shall provide management and disposal services to load, transport and land apply solids from the Plant. The Contractor shall also provide, if requested, the transport and disposal of liquid residuals to FW's Quarry facility located at 9600 Ox Road, Lorton, VA 22079.

A. The Contractor shall provide the services in accordance with the following:

- 1. Remove dewatered residuals from the existing outdoor concrete storage pad or any other method approved in advance by FW. Outdoor concrete storage pad dimensions are approximately 180' wide x 180' deep x 12' high. For aerial view of outdoor concrete storage pad refer to Google Earth for Plant solids storage pad.

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Attachment A – Specifications & Scope of Work

2. Blend dewatered residuals which contain PAC with other dewatered residuals as required for disposal.
 3. Obtain and pay for all required land application, disposal or other permits or authorizations required from local, State and Federal regulatory agencies; maintain all permits or authorizations by renewal as required; pay all associated fees and keep all related agreements and other paperwork up to date. Provide copies of all permits, authorizations, agreements, invoices, and all other documentation and correspondence related to land application or disposal of the residuals to FW.
 4. Land apply or dispose of by other approved method all dewatered residuals removed from the site in accordance with all applicable federal, state and local regulatory requirements, including development of nutrient management plans or other documentation required by regulation or through Virginia's implementation of the Chesapeake Bay Total Maximum Daily Load ("TMDL") for nutrients and sediment.
 5. When emergency or unforeseen conditions with the residuals handling system at the Corbalis Treatment Plant occur, the Contractor may be required to remove liquid residuals (3 to 4 percent residuals concentration) from the thickener tanks and transport to the FW quarry at Lorton for disposal.
- B. The Contractor shall be responsible for all loading and unloading of his vehicles.
- C. The Contractor shall furnish all labor, supervision, materials, plant, power, light, heat, fuel, water, tools, appliances, equipment, supplies, and other means of construction necessary or proper for performing and completing the Work.
- D. The Contractor shall obtain and pay for all required permits, authorizations, agreements or other approvals.
- E. The Contractor shall perform and complete the Work consistent with safety of life and property, in strict accordance with the Contract Documents.
- F. The Contractor shall repair, restore and clean structures and property that may be damaged or disturbed during the performance of the Work.
- G. The Contractor shall be solely responsible for the adequacy of his Plant and equipment.
- H. FW will provide fuel for the Contractor supplied loader.

1.3 Contractor's Use of Site and Premises

- A. The Contractor shall furnish all equipment and personnel required to load dewatered solids from the concrete storage pad located at the Plant site into appropriate vehicles for transportation off the Plant site.
- B. The Contractor shall supply and leave at the Plant site a rubber-tired loader with a minimum four-yard bucket.
- C. The Contractor's use of the Plant site shall be restricted to the concrete storage pad and the access road to the concrete storage pad.

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Attachment A – Specifications & Scope of Work

- D. The Contractor's operations shall be limited to the hours of 7:00 a.m. until 9:00 p.m., Monday thru Friday. No operations to be conducted on Holidays or weekends without written approval from FW.
- E. The Contractor shall "push up" or stack residuals deposited at the pad, so pile remains approximately 12 ft. in height to utilize the full capacity of the pad and always maintain a neat and orderly appearance.
- F. This Contract may include the hauling of liquid residuals (3 – 4% solids concentration) from the Corbalis Water Treatment Plant to a FW owned quarry in Lorton, Virginia. It may be necessary to transport liquid residuals, via tanker trucks, from thickener tanks to the quarry for disposal if solids dewatering equipment were to fail. The estimated quantity to be hauled for a maximum event is 75,000 gallons per day. A trucking operation may be confined to a 12-hour day as dictated by County code. This Work is dependent on emergency conditions at the Plant due to inability to operate belt filter presses and all site storage for liquid residuals are full.
- G. Removal of dewatered residuals must occur within 14 days after production. Under no circumstance shall residuals remain at the disposal pad longer than 30 days. If residuals remain at the disposal pad longer than 30 days, liquidated damages shall be levied in accordance with Section 4.5 of this Contract Document.
- H. FW will shall have the option to remove residuals which have been stored at the site more than 30 days due to Contractor's failure to perform. FW's cost for loading, transportation and disposal of residuals removed from the Plant site because of the Contractor's failure to perform will be deducted from monies due to the Contractor or his surety shall be liable, therefore. FW will begin levying liquidated damages, as referred to in paragraph 7 above.
- I. The Contractor shall be responsible for all areas of the site used by him and all subContractors in the performance of the Work. The Contractor shall exert full control over the actions of all employees and other persons in the use and preservation of property and existing facilities except such controls as may be specifically reserved to the Owner or others. The Contractor may require all persons on the site to observe the same regulations as he requires of his employees and representatives. FW employees, authorized representatives, Consultants, the Engineer and the Engineer's employees will not be subject to the provisions of this paragraph.
- J. FW will provide snow and ice removal on the site and access road to the pad.
- K. The Contractor shall park tanker or trailers for short term or overnight upon approval of the FW Representative.

1.4 Intent of Contract Documents

The apparent silence of the Contract Documents as to any detail, or the apparent omission from them of a detailed description concerning any Work to be performed or materials to be furnished, shall be regarded as meaning that only the best general practice is to prevail and that only materials and workmanship of the best quality are to be used and interpretation of these Specifications shall be made upon that basis.

1.5 Land Requirements and Disposal Methods

- A. The Contractor shall secure land sites for storage and disposal which have a total effective area in excess of the area required for the maximum annual residual quantities.

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Attachment A – Specifications & Scope of Work

- B. The Contractor shall maintain the required land site so that the disposal of solids is not interrupted. The list of land sites submitted to FW shall be updated quarterly.
- C. The Contractor shall secure all necessary permits for the transportation, storage and land application of dewatered residuals as required by any local, State and Federal regulatory agencies, including development of nutrient management plans or any other plans required because of Virginia's implementation of the Chesapeake Bay TMDL for nutrients and sediment. Sufficient permits shall be always maintained in hand for 12 months of continuous operation and during entire Contract period.
- D. The Contractor shall secure all required temporary residuals storage sites located off the Plant site and all permits required to store residuals during periods when soil application cannot occur.
- E. The Contractor shall dispose of the dewatered residuals by land application or other approved method for farming and agricultural purposes as approved by local, State and Federal Agencies. Disposal methods shall comply with all environmental protection laws, ordinances, rules and regulations.
- F. The Contractor shall propose, as alternatives, any approved method of disposal or beneficial reuse, i.e. land filling, soil blending, incineration or other methods to inform FW of all management options available.
- G. The Contractor shall obtain all agreements with landowners, provide all equipment, materials, labor and services necessary to dispose of all dewatered residuals.

1.6 Satisfactory Completion of Work

All Work, whether it be within a highway right-of-way, neighboring jurisdictions, or private easements, shall be completed to the satisfaction of FW. It is hereby understood that FW will be the final approving body as to the acceptability of the Work, regardless of prior approval from other jurisdictions.

A. For Information Purposes.

- 1. Wet tons managed for previous three years are as follows:

- 2021 – 10,135 wet tons
 - 2022 – 8-631 wet tons
 - 2023 – 9,135 wet tons

- 2. Residuals managed in 2023 were 100% land applied. Fairfax Water has not utilized the liquid form method of disposal in over fifteen years.
- 3. FW will be responsible for transferring residuals from the Thickener Tanks to the Contractor's tankers at the Plant if emergency is declared.

B. Disposal Plan.

- 1. The Contractor shall be required to perform a disposal plan that includes the following:
 - i. Identification of disposal sites and authorizations, agreements and permits for use, demonstrating that the Contractor is able to implement the program within 10 days from Notice of Award.

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Attachment A – Specifications & Scope of Work

- ii. A loading, transport and disposal plan including storage provisions conforming to any applicable federal, state and local regulatory requirements. loading, transport and disposal plan including storage provisions conforming to any applicable federal, state and local regulatory requirements.

C. Measurement Authority.

1. Each truck will be weighed at the FW truck scale located on the Plant site before and after loading.
2. Payment for residuals disposal will be made monthly at the applicable Contract unit price per wet ton of dewatered residuals loaded, weighed and removed from the Plant site.
3. Payment will be made on the basis of wet tons of dewatered residuals loaded, weighed and removed from the site by the Contractor. No separate or additional payments will be made on account of residuals quantities being more or less than the estimated average residual quantities.
4. Water shall not be added to the residuals prior to measurements being taken for payment.

1.7 Warranty

- A. In addition to any other warranties expressed or implied, the specific warranties of Merchantability and Fitness for a Particular Purpose apply to all orders placed as a result of this Contract.
- B. If at any time, any Contract item fails to conform to the Contract Documents, the Contractor shall, at no additional cost to FW, promptly replace the defective item. If the Contractor is unable to remedy such nonconformity during a time period consistent with the requirements, FW may undertake to remedy the nonconformity and, in such case, Contractor shall reimburse FW for any costs thereby incurred.
- C. The Contractor shall warranty repairs for no less than one year for Workmanship from beneficial use of the Filter (Beneficial Use is 3 weeks after Contractor Work is complete, and FW has backwashing all GAC fines to waste and returned the filter to service).

End of Attachment A – Specifications & Scope of Work

**Contract 2024-082
Attachment B – Pricing Schedule**

Pricing Schedule

Contract Item Number	Description	Unit of Measure	Unit Price
1	Dewatered Polymer Conditioned Residuals	Per Wet Ton	\$31.00
2	Liquid Residuals From Thickener Tanks	Per Gallon, Per Day	\$0.3584

End of Attachment B – Pricing Schedule

Contract 2024-081
Attachment C – Standard Terms and Conditions

1.1 Drug-Free Workplace

During the Contract term, Contractor agrees to (i) provide a drug-free workplace for Contractor 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 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.

1.2 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 3.2(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.

1.3 Non-Discrimination by FW

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

1.4 No Employment of Unauthorized Aliens

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

1.5 Right of Audit

Contractor covenants and agrees to retain all books, records, and other documents (electronic or otherwise) relating this Contract (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 Contract 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 Records available for inspection and copying by such Auding Party during Contractor 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 Contract and, regardless of whether such failure occurs during the term of the Contract, or within the five-year period commencing on the date of final payment hereunder, will constitute sufficient grounds for debarment

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Attachment C – Standard Terms and Conditions

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.

1.6 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 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 Contract, 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 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 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 Contract.

1.7 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.

1.8 Arrearage

During the term of the Contract, the Contractor shall not be 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.

1.9 Compliance with Laws, Regulations and Codes

The Contractor 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.

Attachment C – Standard Terms and Conditions

1.10 Contract Changes / Change Orders

- A. No verbal agreement or conversation with any officer, agent, or employee of FW either before or after the execution of any Contract resulting from this solicitation or following negotiations, shall affect or modify any of the terms, conditions, Specifications, or obligations contained in the solicitation, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the Procurement Contact identified on the cover page. Contract changes shall be in writing and shall be on official FW Procurement Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Project Officer.
- B. Changes can be made to the Contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
 2. FW may order changes within the general scope of the Contract at any time by Notice to the Contractor. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the Notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
 - a. By mutual agreement between the parties in writing; or
 - b. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor records and/or to determine the correct number of units independently; or
 - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Procurement Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the Contract generally.

1.11 Contractor 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:
1. A request to include a subcontractor was included in the Bid; and,
 2. The Contractor receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties; or,
 3. The Contractor receives approval to use a subcontractor if FW at its sole discretion determines subcontractor approval would expedite the return of a pump to service, improve a repair outcome, or reduce cost, without compromising service quality.
- B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the Contract. Subcontractors will be approved only when both the Contractor and the subcontractor meet the qualifications to provide quality control and assurance of the subcontracted work.

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For example, if a Contractor requests to subcontract blasting and coatings, both the Contractor and the subcontractor shall have at least an AMPP Basic Coatings Inspector / CIP Level 1 Certification on staff to provide acceptable quality assurance and quality control.

- 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 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 Officer.

1.12 Delivery

In the case of required delivery to FW:

- A. Contractor guarantees delivery of Contract items within the timeframe specified in the Contract Documents. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of Contract and may be grounds for a declaration of default in addition to any other remedies FW may be entitled to.
- B. Deliveries must be made within the delivery time specified in the Contract Documents. If a delay is anticipated, the Contractor must provide as much advanced Notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.
- C. National Terrorism Advisory System: If the National Terrorism Advisory System places the water / wastewater industry on an Elevated Alert or Imminent Alert, all deliveries 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 delivery leaves the Contractor yard, the 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 delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor risk and expense. FW may add additional screening requirements if an Elevated Alert or Imminent Alert is in place

1.13 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.

1.14 Examination of Records

Contractor agrees that during the Contract term, 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 this Contract, 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.

1.15 Indemnification and Responsibility for Claims and Liability

- 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.

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- 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 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 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.

1.16 No Waiver or Estoppel

Neither the inspection by FW nor any of its employees, nor any payment of money, nor payment for, nor acceptance of any Commodity by FW, nor any extension of time shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or of any right to damage herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies provided in this Contract to FW shall be construed as cumulative and shall be in addition to each and every other remedy herein provided. Neither FW, nor any officer, employee, or authorized representative of FW, will be bound, precluded, or estopped by any action, determination, decision, acceptance, return, certificate, or payment made or given under or in connection with the Contract by any officer, employee or authorized representative of the Owner, at any time either before or after final completion and acceptance of the Work and payment therefore from: (a) showing the true and correct classification, amount, quality, or character of the Commodities delivered, or that any determination, decision, acceptance, return certificate or payment was incorrect or was improperly made in any respect, or that the Commodities or any part thereof do not in fact conform to the requirements of the Contract; (b) demanding and recovering from the Contractor any overpayment made to the Contractor or such damages as FW may sustain by reason of the Contractor failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

1.17 Pass-through Price Increases and Decreases

For annually renewable Contracts:

- A. Increases: FW recognizes that the Contractor sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof.
 - 1. Sufficient proof of unanticipated and significant price increases incurred by the Contractor as a direct result of particular residuals loads being rejected by the Contractor's primary delivery site due to the odor being above the ordinary, as confirmed by FW Project Officer, shall constitute:
 - a. Written confirmation from the Contractor's primary delivery site, verifying refusal of the Contractor's residuals load or loads, due to odors, together with a price the Contractor would have been charged if the residuals load was accepted.
 - b. Written confirmation from the Contractor's secondary delivery site of the price charged to the Contractor for accepting the residuals load.
 - 2. Only the Contractor direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the current Contract year.
- 3. Decreases:

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1. Pass through price increases shall cease at the end of the then current Contract year and Contract pricing will return to the pre-pass-through rate. The Contractor will be eligible for and only upon request, the annual economic price increase as defined in subsection 3.3 above.
2. Prior to the end of the then current Contract year, the pass-through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.

4. Pass through price increases will not be a substitute for poor planning by the Contractor. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

1.18 Payment Clauses Required in All Contracts

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

A. That any Contract Awarded by FW include the following clauses:

1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the Contractor by FW for work performed by any subcontractor(s) under the Contract:
 - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract;
or
 - b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor payment with the reason for nonpayment.
 2. Bidders shall include in their offer submissions either: (i) if an individual Contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
 3. The Contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the Contract, except for amounts withheld as allowed in subdivision one.
 4. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent per month.
- B. 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.
- C. A Contractor obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A Contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

1.19 Payment

- A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the Contractor FEIN. Invoices are not to be sent to the Contract Project Officer, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
- B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.

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- C. **Invoices:** The Contractor shall submit invoices for items ordered, delivered, and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or Contract number and are subject to review and approval by FW Project Officer.
- D. **Partial Payments:** Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- E. **Refunds:** If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. **Partial Payments:** Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- F. **Unreasonable Charges:** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

1.20 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.

1.21 Price Firm Period

Bid prices shall be firm and fixed and not be subject to change during the Initial Term of the Contract.

1.22 Price and Title

All prices are for Commodities delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW. Title for such Work shall pass to FW upon receipt and acceptance thereof at FW's designated facility.

1.23 Purchase and Sale Transaction

Any transaction for the purchase and sale of any Commodity shall be effected by FW's issuance to the Contractor of a Purchase Order, in which event the Contractor covenants and agrees to furnish all Commodities described therein in strict accordance with the terms and conditions of such Purchase Order and the other documents that together constitute the Contract.

1.24 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.

1.25 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

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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.

1.26 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.

1.27 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 Officer 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 other guarantees or obligations in this Contract.

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- E. **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.

1.28 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.

1.29 Insurance

A. 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.

B. 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 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 performance under this Contract.

C. 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.

D. 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

E. 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

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for injuries to members of the public and/or damage to the property of others arising from the Contractor use of motor vehicles or other equipment and must cover both on-site and off-site operations.

F. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under law.

1.30 Rider Clause

This Contract has been awarded by FW not only for its benefit, but for the benefit of any other public body eligible to participate in use of the services herein solicited by means of cooperative procurement as provided by, and to the extent permitted by, §2.2-4304 of the Virginia Public Procurement Act.

End of Attachment C – Standard Terms and Conditions

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Attachment D – Special Terms and Conditions

1.1 Delays

By the Contractor: After prior written warning 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) liquidated damages, redeeming the Contractor Performance Bond (or other security as agreed to by FW prior to Contract Award); and to recover any additional costs, lost funds and/or related expenses. This is not a limitation of FW's legal rights to recover damages due to Contractor default in any other way.

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 actions or inactions of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension to the installation schedule 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.

1.2 Force Majeure

If a delivery is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subContractors or supplier(s), a reasonable extension of time as FW deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor FW may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one or more of the Commodities elsewhere for a time, or (iii) terminate the Contract; all without liability to Contractor on the part of FW, as the case may be. Contractor request and justification shall be subject to such substantiation and further inquiries as FW may require.

1.3 Contractor's Compliance and Safety Program

A. The Contractor shall comply with all applicable Federal, State, and local safety programs, regulations, standards, and codes, to include though not limited to:

1. The Virginia Uniform Statewide Building Code,
2. Building Officials & Code Administrators (BOCA) codes (together with adopted International Codes),
3. Virginia Department of Health (VDH) regulations,
4. Virginia Department of Environmental Quality (DEQ) regulations,
5. Virginia-OSH (VOSH) regulations, and
6. National Electric Code (NEC).
7. Commonwealth of Virginia Department of Health Waterworks Regulations
8. Virginia Department of Transportation Road and Bridge Specifications
9. Fairfax County Special Inspections Manual
10. Maryland Department of Environmental
11. Maryland Department of Agriculture

B. The Contractor shall have a written safety program that complies with all applicable OSHA and VOSH standards for General Industry regulations and a written Permit Required Confined Space Entry Program that complies with the then current VOSH Standard Confined Space Entry Standard. A copy of these programs shall be provided to FW with the Contractor's general safety program not later than seven days after Contract Award and before beginning Work.

C. The Contractor, when Working in a confined space, shall utilize only personnel trained for confined space entry and shall provide all entry equipment including atmospheric test equipment.

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D. The Contractor's employees shall wear heard hats while working outdoors at the FW Work site.

1.4 Liquidated Damages

- A. The Work shall begin upon receipt of purchase order and all Work shall be completed in 30 days. It is hereby understood and agreed by the Contractor that time is of the essence in completing the Work specified in the Contract. In the event the Work is not completed in accordance with the purchase order, and the disposal pad is 75% capacity, there will be deducted, not as a penalty but as liquidated damages, the sum \$1,500.00 per day for each and every calendar day the disposal pad remains at 75% capacity.
- B. Exception to the above paragraph, is if the Work is delayed by any act, negligence, or default on the part of FW, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the Contractor or his supplier(s), a reasonable extension of time as FW deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the Contractor, the FW Procurement Department may extend the time for performance of the Work as specified at the Procurement Department's sole discretion.

1.5 Permits and Inspections

The Contractor shall obtain and provide any and all required hauling and disposal or other permits from the appropriate authority.

1.6 Priority Customer

The Contractor understands and acknowledges that FW provides services that are essential to the health and welfare of the public. To the extent that the Contractor must prioritize and/or allocate services among its customers, the requirements of FW will be honored before service is provided to a customer with no obligations with regard to the public health and welfare.

1.7 Site Safety and Access

- A. FW will have the right to deny access to the Site, or require the Contractor to remove from the Site, any individual who has exhibited violent, abusive, or threatening behavior or conduct.
- B. FW may limit, restrict, or prohibit access to areas of the Site on a permanent or temporary basis. When access to such restricted areas is required by the contractor to perform the Work, the Contractor shall obtain permission from the FW Project Manager and shall comply with such conditions or limitations to access as may be imposed by the FW Project Manager.
- C. FW may restrict parking or require parking permits for vehicles to be brought onto the plant. The Contractor shall be responsible for arranging transportation for its personnel to reach the job sites from whatever parking area is provided by FW.

1.8 Superintendence by Contractor

- A. The Contractor shall have a competent Field Supervisor, satisfactory to FW, on the job site or available by phone at all times during the progress of the Work. The Contractor shall be responsible for coordinating all portions of the Work under Contract except where otherwise specified in the Contract documents, and for all safety and Worker health programs and practices. The Contractor shall notify the Project Manager, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.

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- B. The Contractor shall at all times enforce strict discipline and good order among the Workers on the project. The Contractor shall not employ on the Project any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not Work in harmony with those employed by the contractor, subContractors, FW or FW's separate contractors and their subContractors.
- C. FW will, in writing, require the contractor to remove from FW property, any employee FW deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

1.9 Regulatory Requirements

- A. Compliance with the Law: Precautions shall be exercised at all times for the protection of persons and property. The safety provisions of all applicable laws, building and construction codes including, but not limited to, the U.S. Department of Labor Occupational Safety and Health Regulations for Construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54), shall be observed. The U.S. Department of Labor Safety and Health Regulations shall be complied with except where state safety standards have been approved by the Secretary of Labor in accordance with provisions of the Occupational Safety and Health Act, in which case compliance with state and local standards is required. The Contractor shall conduct his Work so as to ensure the least possible obstruction to traffic. The Contractor shall provide for the safety and convenience of the general public and residents within the project limits and the protection of persons and property.
- B. Coordination with Regulatory Agencies
 - 1. Identify and contact all regulatory agencies having jurisdiction.
 - 2. Identify all applicable rules, regulations, and other requirements. Any changes in Rules and Regulations will be the responsibility of the contractor to bear all costs and risks.
 - 3. Demonstrate acceptance of proposed program by regulatory agencies having jurisdiction.
- C. Development of Monitoring and Reporting Requirements
 - 1. Identify all applicable monitoring and reporting requirements.
 - 2. Develop system of monitoring and reporting.
- D. Temporary residuals storage sites shall comply with all local ordinances, regulations, and State and Federal regulatory requirements.
- E. Dewatered residuals shall be applied at loading rates not to exceed those approved by the regulatory agencies and landowners.
- F. Residuals and soil samples shall be collected and tested as required by the regulatory agencies.
- G. All trucks leaving the Plant shall be clean so that residuals are not spilled or tracked onto roadways.
- H. All trucks leaving the Plant shall meet all roadway weight limits at all times.

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1.10 Time Is of the Essence

Time is of the essence! This is a time critical project! Once started, this project must continue without delay or interruption, and unauthorized delays by the Contractor are prohibited. After prior written warning 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 obtaining the services of a qualified contractor to complete the project services and charge any additional or increased costs to the defaulted Contractor.

End of Attachment D – Special Terms and Conditions

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Attachment E – Certificate of Insurance

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CERTIFICATE OF INSURANCE PLACEHOLDER

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