

AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the 1st day of April, 2024, by and between the FAIRFAX COUNTY WATER AUTHORITY, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and CORE & MAIN LP 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 Fire Hydrants, as needed, in accordance with the following, in order of precedence: this Agreement for Service ("Agreement" or "Contract"); the Contractor's bid dated February 15, 2024 (Exhibit I); and FW's Invitation for Bids dated February 2, 2024 (including all addenda) (incorporated by reference) (Exhibit II). In the event that Exhibits I and II 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. SPECIFICATIONS/SCOPE OF WORK

1.1 References

Fairfax Water's Approved Products List (APL), latest Version. Comply with the provisions identified in the Fire Hydrants section of the APL, as applicable.

1.2 Fire Hydrant Standards

Product shall adhere to the latest version of:

- A. ANSI/AWWA C502 - Hydrants, Dry-Barrel Fire
- B. NSF/ANSI 61 - Drinking Water System Components - Health Effects

1.3 Fire Hydrant Products

A. Approved Manufacturers and Models:

- 1. Kennedy Valve Company - K81D with Safety Red and Silver
- 2. Mueller Company - Centurion 250A-423 with Red #10 and Silver #18

B. Design and Performance Requirements

- 1. Fire hydrants shall be of 3-way class with a 5 1/4-inch main valve opening, with one 4 1/2-inch pumper outlet and two 2 1/2-inch hose outlets all with National Standard fire hose coupling threads.
- 2. The hydrant shoe shall have at least one all bronze drain outlet.

3. The hydrant shoe and barrel may be made of different material.
4. The complete interior of the shoe shall have epoxy coating if the o-ring is in contact with cast iron.
5. If the bottom O-ring is in contact with brass, no epoxy coating of the interior of the shoe is required.
6. Hydrants shall be furnished with a breakaway feature that will break cleanly on the underside of flange upon impact. This shall consist of a break flange with a breakable stem coupling. Breakable bolts will not be accepted. This break flange shall also permit 360° rotation of the upper barrel to position nozzles in any desired position.
7. Repair of hydrants shall be with Original Equipment Manufacturer's (O.E.M.) parts.
8. Shall be UL listed and FM approved.
9. Shall be NSF 61 compliant.
10. Hydrants shall be shop coated by the approved manufacturer as follows:
 - Hydrant Barrel – Red
 - Tops and Caps – Silver

1.4 Accessories for Hydrants

Each hydrant shall be supplied with a 6" MJ accessory kit consisting of an MJ gland, gasket and high-strength, low-alloy t-bolts and nuts. The Supplier shall be responsible for calculating the total number of accessory kits to be supplied with each order.

1.5 Access to Manufacturing Plant

Fairfax Water reserves the right to inspect and monitor the production of the materials being furnished under this contract. The Supplier shall provide access to all of the Supplier and manufacturer's production, testing, storage, operation, and other areas if, and when, requested by Fairfax Water's representative.

1.6 Approved Products

The specifications list manufacturers whose products have been tested and approved for use by Fairfax Water. If any modifications, changes, or alterations have been made by the manufacturer to previously approved products after product approval, the revised product is not considered to be approved for acceptance under this Contract and will require approval prior to acceptance as an approved product.

FW views the approved products as the level of quality required. If bidding an alternate, bidders shall indicate the manufacture and model of the material being bid, and provide enough product detail to demonstrate alternate is equal to product specified. Acceptance of alternate will be at the sole discretion of FW.

1.7 Condition of Materials on Delivery

Fire hydrants shall be packaged in a manner to prevent damage during shipping and unloading. Packaging shall be such that hydrants do not come in contact with one another during shipment and unloading. Hydrants shall be Separated and supported using wood boards, timbers, blocks or similar packaging material that are sturdy and secured against tilting over or shifting by strapping or other means. Load binders, straps or chains shall

not come in contact with the painted portion of the hydrants. All hydrants shall be drained and completely closed prior to shipping. Any damage to the coating because of rough handling or rubbing during shipment shall be repaired to its original condition by the manufacturer.

1.8 Delivery Locations

Orders placed by FW will normally be for delivery within Fairfax County. FW has three property yards within Fairfax County: one in located in Chantilly, Virginia, 20151, a second located in Newington, Virginia, 22079, and a third located in Fairfax, Virginia, 22031. FW reserves the right to have orders delivered outside of the County for storage purposes.

1.9 Packing List

A packing list shall accompany every shipment. The absence of a packing slip or required shipping order information may cause refusal of the shipment. The packing list shall contain: Purchase Order number, Delivery release number, item description, quantity shipped, quantity ordered, and quantity backordered (if any).

1.10 Estimated Quantities

The quantities specified herein are estimates based upon current consumption and projected demand for the next contract year, and shall not be construed to represent an amount which FW shall be obligated to purchase. The exact amounts ordered may be more or less, subject to FW's actual needs. Bidder acknowledges and agrees that FW will only be responsible for the amounts actually purchased.

1.11 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 solicitation.
- B. If at any time, any contract item fails to conform to the bid/contract specifications, 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. Provide one-year parts and labor warranty. Warranty is to be effective upon receipt at FW. Warranty is to be with either the manufacturer or a service facility authorized by the manufacturer to perform warranty services. On the bid summary sheet, specify where warranty service will be performed: at FW, Manufacture, or bidders location. If other than at FW, include the name, address and telephone number of the repair facility. All costs for warranty service (including shipping and insurance) shall be included in the warranty and at no additional cost to FW.

2. INSTRUCTIONS TO BIDDERS

2.1 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.

2.2 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.

2.3 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. Any bidder that fails to provide the required information may not receive an award.

2.4 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.

2.5 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.

2.6 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.

2.7 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. The Contract including any Amendments or Change Orders;
 2. All Purchase Orders;
 3. Any Addenda to the IFB;
 4. This IFB (including all Appendices and Attachments hereto); and

- 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.

3.11 Delivery

In the case of solicitations that require delivery to FW:

- A. By submitting a bid in response to this solicitation, the Bidder guarantees delivery of contract items within the timeframe specified herein or as indicated in the bidders bid submission form. 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 by within the delivery time specified in the bid submission document. 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. Homeland Security Advisory System: If the Homeland Security Advisor System places the water / waste water industry in Codes Orange or Red, 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's 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's risk and expense.

3.12 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.

3.13 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.

3.14 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.

3.15 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 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.
- E. 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.

3.16 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 \$1,000,000 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.

3.17 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's failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

3.18 Pass-Through Price Increases and Decreases

Note: This section only applies in the event a renewal year option is utilized and only if that renewal year option has a twelve-month firm price for the materials.

For annually renewable contracts:

- A. Increases: FW recognizes that the Contractor's 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. Only the Contractor's 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 then current contract year.
- B. Decreases:
 - 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 price adjustment as defined in subsection 5.1 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.
- C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

3.19 Partial Invalidity

Neither any payment for, nor acceptance of, the whole or any part of the services by FW, nor any extension of time, shall operate as a waiver of any provision of any Contract resulting from this IFB, nor of any power herein reserved to FW, or any right to damages herein provided, nor shall any waiver of any breach of any Contract be held to be a waiver of any other or subsequent breach. Failure of FW to require compliance with any term or condition of any Contract shall not be deemed a waiver of such term or condition or a waiver of the subsequent enforcement thereof.

3.20 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's 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 1.
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's 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.

3.21 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's FEIN. Invoices are not to be sent to the contract Project Manager, 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.
- 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 Manager
- 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.

3.22 Price Firm Period

Bid pricing shall be firm and fixed as originally offered and accepted for the first twelve months of the contract.

3.23 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 Commodities shall pass to FW upon receipt and acceptance thereof at FW's designated facility.

3.24 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.

3.25 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.

3.26 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.

3.27 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.

3.28 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.

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.

3.29 Faith-Based Organizations

FW does not discriminate against faith-based organizations.

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 Severability

In the event that any provision shall be adjudged or decreed to be invalid by a court of competent jurisdiction, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

3.32 Notices

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 CONTRACTOR:

Louis Peon
 Branch Manager
 Core & Main LP
 44098 Mercure Circle #125
 Sterling, VA 20166
Louis.Peon@coreandmain.com

TO FW:

Elizabeth B. Dooley, CPPO, CPPB
 Procurement Manager
 Fairfax Water
 8570 Executive Park Avenue
 Fairfax, VA 22031
edooley@fairfaxwater.org

Notice is deemed to have been received: (i) on the date of delivery if delivered in person; (ii) on the first business day after the date of delivery if sent by same day or overnight courier service; or (iii) on the third business day after the date of mailing, if sent by certified or registered United States Mail, return receipt requested, postage and charges prepaid.

3.33 Licensure

To the extent required by the Commonwealth of Virginia (*see e.g.* 54.1-1100 *et seq.* of the Code of Virginia) or FW, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.

3.34 Authority to Transact Business in Virginia

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with FW pursuant to the Virginia Public Procurement Act 2.2-4300 *et seq.* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. FW may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

3.35 Drug-free workplace to be maintained by contractor*

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the 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 the 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 the contractor that the 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 or vendor.

3.36 Employment Discrimination by Contractor Prohibited; Required Contract Provisions

The following provision is required to be in every contract of more than \$10,000 (Virginia Public Procurement Act, § 2.2-4311)

A. During the performance of any ensuing contract, the Contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in

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

2. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

The contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

3.37 Counterparts

This Contract and any amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Contract or any amendment or renewal. A signature by any party to this Contract provided by facsimile or electronic mail is binding upon that party as if it were the original.

3.38 Force Majeure

A party is not liable for failure to perform the party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the contracted for works but excluding any industrial dispute which is specific to the performance of the works or this Contract, interruption or failure of electricity or telephone service.

If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, that party must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract. An event of force majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

The Contractor has no entitlement and FW has no liability for: (1) any costs, losses, expenses, damages or the payment of any part of the contract price during an event of force majeure; and (2) any delay costs in any way incurred by the contractor due to an event of force majeure.

3.39 Survival of Terms

Upon discharge of this Agreement, Sections (Notice, Hold Harmless, Warranties, Governing Law/Forum, Contractual Disputes) of these Terms and Conditions continue and survive in full force and effect.

3.40 Non-Waiver

No waiver of any provision of this Agreement shall constitute a waiver of any other provision nor shall any waiver of this Agreement constitute a continuing waiver unless otherwise expressly provided.

3.41 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).
- 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. When working in a confined space, the Contractor shall utilize only personnel trained for confined space entry and shall provide all entry equipment including atmospheric test equipment.
- D. Hard Hat Area: Contractor's employees shall wear hard hats while working outdoors at the work site.

3.42 Contractual Disputes

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

Be delivered to the attention of FW's Procurement Representative assigned to this contract at the address shown on the cover sheet of this RFP, not later than five days after the occurrence or of the beginning of the Work upon which the claim is based; and
 Contain a reasonably detailed description of the basis of the claim otherwise the claim will be deemed to have been waived. FW will make a written decision upon any such claim within 60 days after submittal of the claim. The Consultant 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 the Consultant initiates legal action as provided in Section 2.2-4364 of the Virginia Code. Failure of FW to render a decision within 90 days will not result in the Consultant 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 the Consultant's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2-4365 of the Virginia Code has been established for contractual claims under this Agreement.

No claim of any nature will be made against FW by or on behalf of a subcontractor unless the Consultant has first: (a) evaluated such claim thoroughly and determined it to be meritorious; (b) issued a written notice to the subcontractor finding the subcontractor's claim to be meritorious and setting forth any additional compensation or additional days to be paid or granted to the subcontractor on account of such claim; and (c) paid the subcontractor in full for such claim. In presenting such a claim, the Consultant will provide FW with a copy of the written notice to the subcontractor and with evidence of payment in full of the subcontractor's claim. No such claim will exceed the amount actually paid to the subcontractor.

3.43 Priority Customer

By submitting a Bid in response to this solicitation, Bidder 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.

3.44 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 and charge any additional or increased costs to the Contractor.

4. CONTRACT TERM AND COMPENSATION

The initial term of this agreement shall be April 1, 2024 through March 31, 2025

Pricing shall be in accordance with the following:

Bid Item	Description	Unit of Issue	Unit Price
1	Hydrant, Bury, 5-1/4 x 3'	EA	\$1,465.93
2	Hydrant, Bury, 5-1/4 x 3-1/2'	EA	\$1,501.64
3	Hydrant, Bury, 5-1/4 x 4'	EA	\$1,537.35
4	Hydrant, Bury, 5-1/4 x 4-1/2'	EA	\$1,573.06
5	Hydrant, Bury, 5-1/4 x 5'	EA	\$1,608.77
6	Hydrant, Bury, 5-1/4 x 5-1/2'	EA	\$1,644.48
7	Hydrant, Bury, 5-1/4 x 6'	EA	\$1,680.20
8	Hydrant, Bury, 5-1/4 x 6-1/2'	EA	\$1,715.91
9	Hydrant, Bury, 5-1/4 x 7'	EA	\$1,751.62
10	Hydrant, Bury, 5-1/4 x 7-1/2'	EA	\$1,787.67
11	Hydrant, Bury, 5-1/4 x 8'	EA	\$1,823.39
12	Hydrant, Bury, 5-1/4 x 8-1/2'	EA	\$1,859.10
13	Hydrant, Bury, 5-1/4 x 9'	EA	\$1,894.81
14	Hydrant, Bury, 5-1/4 x 9-1/2'	EA	\$1,930.18
15	Hydrant, Bury, 5-1/4 x 10'	EA	\$1,965.89

FAIRFAX COUNTY WATER AUTHORITY

CORE & MAIN LP

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Phone: (703) 289-6261
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By: 
Name: Jamie Bain Hedges

By: Louis Peon
Name: Louis Peon

Title: General Manager

Title: Branch Manager

Date: 3/22/24

Date: 3/21/24