

AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the 1st day of August, 2024, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and **PRO COMM E.L.S. LLC** 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 utility locating and marking services, as needed, in accordance with the following, in order of precedence: this Agreement for Service ("Agreement" or "Contract"); the Contractor's bid dated April 29, 2024 (Exhibit I); and FW's Invitation for Bids dated April 5, 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

A. Definition of Terms

1. **VIRGINIA UTILITY PROTECTION SERVICES (VUPS)**
2. A **LOCATE** is a Notice of Intent to Excavate received by the Contractor from VUPS for the purpose of identifying and/or marking the location of Fairfax Water underground facilities within the limits of the proposed excavation.
3. A **NOTICE OF INTENT TO EXCAVATE** is a notice by any excavator of the excavator's intention to excavate in a designated location or locations.
4. **UNDERGROUND FACILITIES** shall include all underground facilities owned by Fairfax Water.
5. **MARKING(S)** is the method of identifying Fairfax Water facilities, compliant with the Virginia State Corp. Commission Division of Utility & Railroad Safety guidelines. Operators will mark their underground utility lines in accordance with the Act and the Commission's General Marking Requirements. (Rule 20VAC 5-309-110) It requires a clearly visible identification of the location of County's facilities by using paint, stakes or flags.
6. **THE ACT** is the Underground Utility Damage Prevention Act, Virginia Code 56-265.14 and will be referred to as "the Act".
7. **OPERATOR.** Fairfax Water is an Operator as defined in the Act.
8. The Contractor shall receive, and respond as required, to all notifications directed to Fairfax Water in accordance with the Underground Utility Damage Prevention Act for the purpose of safeguarding Fairfax Water sub-surface facilities from excavation damage.

B. Administration

The Contractor shall provide such office services and supplies as may be required for proper performance under the contract.

Normal service hours and working days of Contractor's office shall follow those of the Virginia Utility Protection Service.

The Contractor's administrative responsibility includes, but is not limited to, receipt, recording, dispatching and closing out of any notifications received from VUPS.

C. Performance Standards

In addition to any requirements of other sections of this IFB, Contractor agrees to the following minimum performance and/or service delivery requirements.

1. Contractor shall have no less than sixteen (16) locators available to locate Fairfax Water facilities at all times during the contract period. Four (4) or more locators shall have a minimum of ten (10) years of experience in locating water, sewer, electric, fiber and traffic signals.
2. Receive and respond to all Notice of Intent to Excavate directed to the Fairfax Water in accordance with the Act. All regular tickets shall be marked according to the standards of the "Act", i.e. no later than seventy-two (72) hours after transmission of the regular ticket.
3. Contractor agrees to pay Fairfax Water for damages to Fairfax Water facilities if incorrect marking or failure to mark by the Contractor occurs.
4. Contractor agrees to contact Fairfax Water Damage Prevention Personnel immediately upon being notified that there has been damage involving any Fairfax Water owned utility.
5. Contractor shall have no less than a 99.998% accuracy rate for all locates the Contractor provides.
6. Bidders shall provide to Fairfax Water a proposed personnel list that shall contain at a minimum the names of four (4) National Utility Locating Contractors Association (NULCA) certified locators with documentation to prove their status in accordance with 56.265.19E.
7. Fairfax Water reserves the right, with the full cooperation of the Contractor, to review recorded damages, and fines recorded regarding the Contractor's performance.
8. All records associated with the performance of any resulting agreement shall be made available to authorized Fairfax Water personnel upon request.
9. All "Emergency Excavation" notices shall be responded to in accordance with applicable Virginia code.
10. All routine notices shall be completed in accordance with applicable Virginia code.

11. The Contractor shall perform all work in an excellent and workmanlike manner and maintain a positive public image.
12. The Contractor's three-month moving average "NO SHOW" rate shall not exceed 0.2%.

D. Locating Facilities

The Contractor shall provide all tools and materials required for the safe performance of all services contained in this IFB and resulting contract.

The Contractor shall provide and maintain a vehicle fleet that is clearly marked with the corporate name, maintained in a clean condition, and kept in a safe condition.

E. Records Information

Fairfax Water will provide the best available records of underground facilities and such other available information to the Contractor which may be required for proper performance of the resulting contract.

F. Damage Investigation

In the event Fairfax Water facilities are damaged by a third party as a direct result of Contractor's errors or omissions to properly mark Fairfax Water's facilities in accordance with applicable Virginia code, along with any other County, municipal, or local laws governing utility protection, the Contractor shall be liable for repair or replacement expense and associated collection expense to Fairfax Water.

Upon notification that Fairfax Water's underground facility has been damaged in an area being serviced by the Contractor, Fairfax Water may direct the Contractor to conduct an on-site investigation of the incident and submit a full report of their findings to the Fairfax Water's representative within (5) five working days. Actions indicating negligence of the Contractor include, by way of illustration and not limitation, the failure to:

1. Thoroughly review all related maps, plats and "as-builts" as supplied by Fairfax Water;
2. Positively identify proposed excavation area;
3. Visually assess any physical utility structures helpful in identifying underground line locations;
4. Properly use, or use fully operational and appropriate, electronic locating equipment;
5. Properly apply marks on a horizontal plane; and,
6. Mark the site within the time prescribed by Virginia Code.

G. Contractor Responsibilities

1. Perform services in a manner commensurate with the requirements of the Act. All services provided shall be subject to inspection and acceptance by Fairfax Water Damage Prevention Personnel.
2. Respond to all "Emergency Notices" as defined in the Act, (as defined in the Underground Utility Damage Prevention Act) within three (3) hours of receipt of the Emergency Notice and in accordance with the provisions of the Act.
3. Respond to all "Routine Notices" prior to the announced start time of excavation activity and in accordance with the Act, unless the excavator approves the extension of the response.
4. Abide by the Underground Utility Damage Prevention Act in its entirety.
5. Maintain all marks in accordance with the Underground Utility Damage Prevention Act.

1.1 Estimated Quantities and Delivery Locations

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. The Bidder acknowledges and agrees that FW will only be responsible for the amounts actually purchased.

1.2 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.

1.3 References

Each Bidder shall submit with its Bid, three references (See Attachment 2 – References). References shall be able to attest without reservation to the fact that the Bidder provided the contracted goods/services without a significant problem of any kind, and at any time during the term of the Contract.

1.4 Insurance Claims against Bidder

In addition to the mandatory insurance requirements listed in Subsection 3.45 (Insurance Requirements, 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. FW may require such information from the Contractor as it deems necessary to assess the Contractor financial ability to pay any deductibles with respect to the insurance policies required hereunder.

1.5 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.

1.6 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.

1.7 Brand Names

In the case of Bids specifying brand names or models:

- A. Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that FW, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. Each Bidder is responsible to clearly identify the product being offered (by manufacturer's name, model, part number, etc.) and to provide sufficient descriptive literature, catalog cuts and technical detail to enable FW to

determine if the product offered meets the requirements of the solicitation. Failure to furnish adequate data for evaluation purposes may result in declaring an offer non-responsive. Unless the Bidder clearly indicates that the product offered is an "equal" product, such Bid will be considered to offer the brand name product specified in this solicitation.

- B. For purposes of this solicitation and any contract that may result here from, FW's designation of any one or more manufacturers and/or suppliers as "preapproved" or "acceptable" shall signify only that such manufacturers and/or suppliers previously have submitted work samples or the like to FW which satisfied FW's requirements. FW's designation of any one or more manufacturers and/or suppliers as "preapproved" or "acceptable" shall in no event be deemed or construed to be a representation or warranty on the part of FW of any such manufacturer's or supplier's capability or capacity (in terms of financial wherewithal, personnel and equipment availability, managerial ability or otherwise) of performing any of the requirements of this solicitation in accordance with the terms and conditions hereof. Each Bidder shall conduct such independent investigation into the qualifications, experience and abilities of its selected manufacturers and suppliers as it deems appropriate under the circumstances.

1.8 Cancellation

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

1.9 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.

1.10 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.

1.11 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 FW in the manner prescribed herein.

1.12 Incorporation by Reference

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

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

1.13 Negotiation with Low Bidder

If the lowest Bid submitted by a responsive and responsible Bidder exceeds available funds for this procurement, then FW may, in its discretion, conduct negotiations with the lowest responsive and responsible Bidder (the "Low Bidder") in an effort to obtain a Contract price that is within available funds. In such event, FW will notify the Low Bidder verbally or in writing that its Bid exceeds available funds and will schedule a conference with the Low Bidder, FW staff, and such advisors and consultants as FW deems appropriate in order to discuss possible modifications to the scope of the procurement that may result in a price that is within available funds. The conference and any subsequent negotiations may be conducted in person or by telephone. If, during the conference, the parties arrive at an acceptable modification to the scope of the project and a Contract price that is within available funds, then FW may Award a Contract to the Low Bidder based upon the newly modified terms and conditions. Otherwise, the Low Bidder will, within 15 days after the date of the conference (or such longer or shorter period as may be specified in writing by FW), submit to FW a written addendum to its original Bid Form which describes its proposed modification(s) to the scope of the procurement and sets forth the Low Bidder's newly adjusted Bid price. FW may conduct further negotiations with the Low Bidder or request additional clarifications or modifications. If the Low Bidder's proposed modifications are acceptable to FW and the associated contract price is within available funds, then FW may a Award a Contract to the Low Bidder based upon the modified terms and conditions. If the proposed modifications are not acceptable to FW, or the associated price reductions are not within available funds, then FW will terminate negotiations and reject all Bids.

1.14 Unit Prices Prevail

In the event that there is a mathematical error on the summary sheet, the unit price for each item shall prevail. All costs to provide the goods and/or services specified in this solicitation shall be shown on the attached Bid summary sheet. Line items left blank will be interpreted as at no cost to FW.

END OF SECTION 1

SECTION 2

2. STANDARD TERMS AND CONDITIONS

2.1 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.

2.2 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, sub-consulting agreement, and purchase order over \$10,000, in order that the provisions above will be binding upon each subcontractor, subconsultant, and vendor.

2.3 Non-Discrimination by FW

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

2.4 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).

2.5 Term of Contract

The initial term of this Contract shall commence on the date the Contract is fully executed by FW and expiring on the last day of the twelfth (12th) month following execution of the Contract by FW ("Initial Contract Term"), unless otherwise stated as provided in the Contract Documents.

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 thirty (30) 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.

2.6 Contract Price Adjustment

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.

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 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 duration of any resultant Contract.

If the CPI-U for Washington-Arlington-Alexandria is not the appropriate index for the item(s) being Bid, the Bidder may substitute any other single BLS price index (e.g., Producer Price Index – metals) providing that the substitute price index constitutes the greatest component of the Contract item. Multiple price indexes will not be considered or allowed. Bidder must specify the specific BLS Group and BLS Item that is to be used (e.g., BLS Group: Metals and products; BLS Item: Pressure pipe and fittings, ductile iron (BLS Series ID# WPU10150237) on their Bid Submission Form. The specific BLS index identified by the Bidder on their Bid Submission Form will be used for the duration of the Contract. If the substituted BLS index is discontinued by the BLS during any Contract term, the Bidder may submit a request to the Procurement Contact to change the substituted BLS index to a different BLS index so as long as the newly substituted BLS index meets the requirements of this paragraph. If an alternate BLS index does not exist, or if the Contractor fails to request a change in the BLS index, the Contractor will automatically revert to the CPI-U for Washington-Arlington-Alexandria for the remainder of the Contract terms.

Any request for Contract price increases must be submitted at least 60 days prior to the end of the then current Contract year.

Issuance of a written renewal document and/or purchase order for the optional years 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 Contract year providing that FW has not formally canceled the Contract.

Negative BLS index: If the agreed upon index is a negative number the Contractor shall reduce Contract rates by the same amount for new Contract year.

2.7 Estimated Quantities; No Guaranteed Minimum

During the term of the Contract, the Contractor shall furnish all of the Work described in the Contract. 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.

2.8 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 Documents 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 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.

2.9 Dispute Resolution Process

Contractual claims, whether for money or for other relief, will be submitted in writing to FW not later than 60 days after final payment; provided however, that written Notice of Contractor 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.

2.10 Antitrust

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to FW all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FW.

2.11 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.

2.12 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.

2.13 Availability of Funds

It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available, or which may hereafter become available for the purpose of this agreement.

2.14 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.

2.15 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 Manager.
- 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.

2.16 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 is included in the Bid and,
 2. The Bidder receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties.
- B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the Contract.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non -FW property as a result of its failure, or its subcontractor failure to protect such facilities and utilities.
- D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its Subcontractor(s). Replacements will be of equal or better quality than the property damaged property, and all such work must be approved by FW Project Manager.

2.17 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 / wastewater 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 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.

2.18 Ethics in Public Contracting

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

2.19 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.

2.20 Formation of Contract

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

2.21 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.

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

2.22 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.
- 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.

2.23 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).

2.24 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. 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.
- 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 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.
- 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.

2.25 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.

2.26 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 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.

2.27 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.

2.28 Price Firm Period

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

2.29 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.

2.30 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.

2.31 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.

2.32 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.

2.33 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.

2.34 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 other guarantees or obligations in this Contract.
- A. NOTE: Any implied warranties, including but not limited to the warranty for "Merchantability and Fitness for A Particular Purpose" cannot be waived and are a mandatory part of this solicitation and any ensuing Contract.

2.35 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.

2.36 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 \$1,000,000
(Other than Products-Completed Operations)

◆ 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 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 the law.

2.37 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 the 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.

2.38 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:
Mike Hicks
Director of Business Development
Pro Comm E.L.S. LLC
3729 Gough St
Baltimore, MD 21224-2538
mike@procommels.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.

END OF SECTION 2

SECTION 3

3. SPECIAL TERMS AND CONDITIONS

3.1 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.

3.2 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.

END OF SECTION 3

4. CONTRACT TERM AND COMPENSATION

The initial term of this agreement shall be August 1, 2024 through July 31, 2025

Pricing shall be in accordance with the following:

Bid Item	Description	Unit of Issue	Unit Price
1	Unit cost for each notice of intent to excavate generated by Miss Utility including up to 1,000 LF of marking	Per Notice	\$9.00
2	Price for additional markings in increments of 1,000 LF	Per 1,000 LF	\$12.00
3	Surcharge for after hours emergencies per notice	Per Notice	\$14.00
4	Additional services, including standby services	Per HR on Site	\$30.00

FAIRFAX COUNTY WATER AUTHORITY

8570 Executive Park Avenue
Fairfax, VA 22031

Phone: (703) 289-6261
Fax: (703) 289-6262

By: *pp. John W. Kingdon*
Name: Jamie Bain Hedges
Title: General Manager
Date: 6/26/24

PRO COMM E.L.S. LLC

3729 Gough St
Baltimore, MD 21224-2538

Phone: (443) 414-1902

By: Mike Hicks
Digitally signed by Mike Hicks
Date: 2024 06 19 09:43:10
-04'00'
Name: Mike Hicks
Title: Director of Business Development
Date: 6/19/2024