

**FAIRFAX COUNTY WATER AUTHORITY
PROCUREMENT DEPARTMENT
8570 EXECUTIVE PARK AVENUE
FAIRFAX, VA 22031**

AGREEMENT NO. 2024-061

THIS AGREEMENT is made and entered into by and between Fairfax County Water Authority ("FW") and Neptune Technology Group, Inc. ("Contractor") authorized to do business in the Commonwealth of Virginia and is effective as of the date executed by FW.

FW and the Contractor, for good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, hereby agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of:

This Agreement and all modifications properly incorporated in the Agreement, and Exhibit A – Water Parts Price List Form U676-26;

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

All provisions required by law to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.

The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing call such conflict, error, ambiguity or discrepancy to the attention of the Owner before proceeding with the Work affected thereby. The Owner will promptly resolve the matter in writing. Work done by the Contractor after such conflicts, errors, ambiguities or discrepancies are discovered, or in the exercise of reasonable care reasonably should have been discovered, prior to written resolution thereof by the Owner shall be done at the Contractor's expense and risk. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.

The Contractor will be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

The Contract Documents set forth the entire agreement between FW and the Contractor. FW and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the "Contract" or the "Agreement."

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"). The primary purpose of this indefinite quantity, indefinite delivery agreement is for the purchase and delivery of Neptune water meter replacement parts. It shall be the Contractor's responsibility, at the

Contractor's sole cost and expense, to provide the specific services set forth in the Contract Documents and all other services reasonably necessary in order to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work further defined in Exhibit A.

3. CONTRACT TERM AND CONTRACT PRICE ADJUSTMENT

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

4. 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 additional one-year periods.

Contractor may submit a request for a contract price increase once annually. Any annual increase in prices or rates shall be limited to either current market pricing provided by Contractor, or 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, whichever annual increase in prices or rates shall be lower. The CPI-U for Washington-Arlington-Alexandria (unadjusted for seasonal changes) is the default index for the duration of any resultant contract.

5. CONTRACT PRICES

FW will pay the Contractor in accordance with the terms of the Payment paragraph below, and Exhibit A – Water Parts Price List Form U676-26, with a minimum discount of 30% applied to the list price of each item, and required in the Contract Documents. The Contractor agrees that it shall complete the Work according to the unit prices specified on Exhibit A - Water Parts Price List Form U676-26, with a minimum discount of 30% applied to the list price of each item, (such amount, subject to modification in accordance with this Agreement, referred to herein as the "Contract Prices"). FW will not compensate the Contractor for any Work beyond that included in Exhibit A - Water Parts Price List Form U676-26 unless the additional Work is covered by a written Amendment to this Contract. The Contract Prices set forth in Exhibit A - Water Parts Price List Form U676-26, with a minimum discount of 30% applied to the list price of each item, include all costs, expenses, including reimbursable expenses, to provide the Work described in this Contract.

6. PAYMENT

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

- C. Invoices: The Contractor shall submit invoices for items ordered, delivered, and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or Contract number and are subject to review and approval by FW Project Officer.
- D. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Quote along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Contractor must waive the requirement.
- 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.
- 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.

7. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of FW's Project Officer ("Project Officer") who shall be appointed by the Department Manager of FW's Department requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work pursuant to the Contract Documents.

8. ADJUSTMENTS FOR CHANGE IN SCOPE

FW may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the work or that the Contractor's services have been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by FW and the Contractor and providing an agreed amount of compensation due. If the Contractor believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. The Contractor will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified above and a written Contract amendment has been signed by FW and the Contractor and a FW purchase order is issued covering the cost of the services to be provided pursuant to the amendment.

9. ADDITIONAL SERVICES

The Contractor shall not be compensated for any goods or services provided except those included in Exhibit A and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by FW and the Contractor, and a Purchase Order is issued by FW covering the expected cost of such services.

Additional services agreed upon by the parties will be billed at the rates set forth in Exhibit A, with a minimum discount of 30% applied to the list price of each item, unless otherwise agreed by the parties in writing.

10. REIMBURSABLE EXPENSES

No expenses except those identified on Exhibit A of this Contract as project-related expenses will be reimbursed if incurred without the prior written approval of FW and the issuance of a FW purchase order detailing the specific expenses to be incurred by the Contractor and their estimated amount. Payment for approved reimbursable expenses will be made within thirty (30) days after receipt by the Project Officer of a correct invoice identifying the nature of the expense. Reimbursable expenses allowed shall be charged to FW on a unit price basis at the Contractor's cost. All amounts paid for reimbursable expenses shall be considered part of the Contract Amount.

The total amount paid for the Work related expenses shall not exceed the amount shown in Exhibit A, with a minimum discount of 30% applied to the list price of each item.

11. REIMBURSABLE TRAVEL-RELATED EXPENSES

No reimbursable travel-related expenses shall be allowed for employees of firms located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of Management and Budget (OMB). If approved by FW for employees of firms outside this area, FW's policy for reimbursement of travel-related expenses will be as follows:

Meals: FW will reimburse a Contractor for the actual out-of-pocket expenses for employee meals, excluding alcoholic beverages at the per diem rate not to exceed the then current IRS rates for individual meal rates. Receipts are required.

Lodging: FW will reimburse lodging expenses incurred for lodging at a reasonably priced commercial facility in the immediate area of the Work, where feasible. Complete and legible itemized receipts shall accompany any request for reimbursement. No reimbursement shall be made for ineligible expenses including room service, laundry, telephone and in-room movies. If a room is shared with another person not connected with the work being performed for FW, including a spouse, FW will reimburse a contractor for no more than the cost of a single room.

Transportation:

General

Reservations shall be made in advance whenever possible to take advantage of all available discounts.

Ground Transportation

Use of public transportation is encouraged. Receipts must be submitted for any inter-city public transportation used. Reimbursement for the use of personal or company vehicles, if allowed, shall not exceed the then current mileage rates paid by FW to its employees and personal use must be excluded from the request for reimbursement.

Rental of vehicles or use of taxicabs, in lieu of the use of a personal or company vehicle, may be approved if the Contractor can justify a cost savings by renting a car or using a taxicab, and obtains written approval in advance from the Project Officer. For rental vehicles, the Contractor will be reimbursed for only those rental charges, insurance and/or fuel fees allocable to the Work. The Contractor will not be reimbursed for the purchase of liability insurance and/or collision/comprehensive insurance if their existing insurance coverage provides protection. Receipts are required for reimbursement.

Air Travel

Airfare will be reimbursed at the lowest cost available, typically coach rate, and must be purchased at least 7 days in advance, unless otherwise approved.

Time limit: Requests for travel reimbursement covering the above submitted more than sixty (60) days after completion of the travel shall not be honored.

Non-reimbursable Expenses: The following expenses are not allowable for reimbursement:

- a) Alcoholic beverages
- b) Personal phone calls
- c) Self-entertainment activities (i.e. pay TV, movies, night clubs, health clubs, theaters, bowling)
- d) Personal expenses (i.e. laundry, valet, haircuts)
- e) Personal travel insurance (i.e. life, medical, or property insurance) for air fare or rental cars.
- f) Auto repairs, maintenance and insurance costs for personal vehicles
- g) Travel expenses incurred to obtain or maintain training and/or certificates that are not associated with an employee's job requirements.
- h) If FW adopts different rates for its employees, the adopted rates shall prevail.

12. *PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by FW for work performed by any subcontractor under this Contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from FW attributable to the Work performed by the subcontractor under this Contract; or
- b) Notify FW and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from FW for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, 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.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of FW. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

13. *NON-APPROPRIATION

All funds for payments by FW to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by FW. In the event of non-appropriation of funds by FW for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, FW will terminate the Contract, without termination

charge or other liability to FW, on the last day of the then current calendar year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and FW shall not be obligated under this Contract beyond the date of termination specified in FW's written notice.

14. FAIRFAX WATER PURCHASE ORDER REQUIREMENT

FW purchases are authorized only if a FW Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. FW will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by FW's Procurement Manager. If the Contractor provides goods or services without a signed FW Purchase Order, it does so at its own risk and expense.

15. Estimated Quantities: No Guaranteed Minimum

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

16. PROJECT STAFF

FW will, throughout the Contract Term, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If FW reasonably rejects staff or subcontractors pursuant to this section, the Contractor must provide replacement staff or subcontractors satisfactory to FW in a timely manner and at no additional cost to FW. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

17. SUPERVISION BY CONTRACTOR

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.

18. *EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any 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.

- b) 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.
- c) 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.
- d) The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- e) The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

19. *EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

20. *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.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by FW in accordance with the Virginia Public Procurement Act, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

21. TERMINATION FOR BREACH BY THE CONTRACTOR

The Contract shall remain in force for the Contract Term and until FW determines that all of the following requirements and conditions have been satisfactorily met: FW has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, FW shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by FW in its discretion.

If FW determines that the Contractor has failed to perform satisfactorily, then FW will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days

before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by FW prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the FW Project Officer within fifteen (15) days after the expiration of the Cure Period. FW may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If FW terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from FW to the Contractor (unless FW in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to FW for all costs incurred by FW after the effective date of termination, including costs required to be expended by FW to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to FW upon demand by FW. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to FW, and FW shall be entitled to recover, damages to which FW is entitled by this Contract or by law, including, direct damages, only proportionate share damages caused directly by the seller.

Except as otherwise directed by FW in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

22. TERMINATION FOR THE CONVENIENCE OF FW

The performance of work under this Contract may be terminated by the FW Procurement Manager in whole or in part whenever the Procurement Manager shall determine that such termination is in FW's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by FW prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits. Reasonable termination costs shall include a restocking fee as negotiated by the parties.

Upon receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to FW; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

23. INDEMNIFICATION (NOTE: Virginia law does not permit FW to indemnify others; cross indemnity provisions are not acceptable to FW)

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify FW, and all of its elected and appointed officials, officers, current and former employees (collectively "FW" for purposes of this section) from and against any and all claims made by third parties or by FW for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's negligence or fault, including the negligence or fault of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by FW, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse FW for expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by FW and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

24. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose FW's data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of FW's request for services under this Contract, are the exclusive property of FW ("Record" or "Records"). All such Records are subject to the assignment provisions of Section 37 and shall be provided to and/or returned to FW upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of FW. Additionally, the Contractor agrees that the Records are "FW Information" as set forth in paragraph 30 below, that the Records are subject to the provisions of paragraph 30 below, and that neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At FW's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at FW's request, shall destroy all computer records created as a result of FW's request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

25. *VIRGINIA FREEDOM OF INFORMATION ACT

The parties understand and agree that FW is subject to the terms and provisions of Code of Virginia §§ 2.2-3700 et. seq, the Virginia Freedom of Information Act ("VFOIA"). All public records in FW's custody, possession or control shall be open to the public for inspection and copying to the extent such disclosure is required by law. Certain exemptions or exclusions may apply, but it is the Contractor's obligation to assert any applicable VFOIA exclusions or exemption, to the satisfaction of the FW Project Officer, within the statutory deadlines. Thereafter it is the obligation of the Contractor to defend and indemnify FW from any claim or suit that may arise as a result of the withholding of records. The FW Project Officer shall make available to the Contractor any VFOIA request which the Project Officer reasonably believes the Contractor may have an interest in.

26. *ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Virginia law, as well as any federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

27. *FAIRFAX WATER EMPLOYEES

No employee of FW shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

28. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

FW shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of FW that make performance impossible or illegal, unless otherwise specified in the Contract.

29. *AUTHORITY TO TRANSACT BUSINESS

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by the Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of FW.

30. *RELATION TO FAIRFAX WATER

The Contractor is an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of FW. FW will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. FW will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, FW will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by FW for its employees.

31. ANTITRUST

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

32. REPORT STANDARDS

Reports or written material prepared by the Contractor in response to the requirements of this Contract or a request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to FW, the Contractor shall comply with the following guidelines:

- All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;
- Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

33. AUDIT

The Contractor shall secure an independent certified public accountant's audit of its finances and program operation after the close of each calendar year (December 31), but no later than October 15 of each such year, and shall forward to FW the findings of such audit in whole, including the management letter or

other ancillary audit components, and permit FW to make such review of the records of the Contractor as may be deemed necessary by FW to satisfy audit purposes. In instances where a management letter was not prepared as an audit function, the Contractor must so certify in writing to FW at the time the audit report is submitted. All accounts of the Contractor are subject to such audit, regardless whether the funds are used exclusively for specific program activities or mingled with funds for other agency activities.

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. FW or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Contract Term and for a period of five (5) years thereafter. If the Contractor wishes to destroy or dispose of records (including confidential records to which FW does not have ready access) within five (5) years after final payment, the Contractor shall notify FW at least thirty (30) days prior to such disposal, and if FW objects, shall not dispose of the records.

34. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of FW.

35. AMENDMENTS

This Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and FW.

36. *DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. Claims denied by the Project Officer may be submitted to FW's General Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the General Manager in the event of a contractual dispute is fifteen (15) days. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, General Manager, or a court, as the case may be.

37. *APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Fairfax County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

38. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

39. NONEXCLUSIVITY OF REMEDIES

All remedies available to FW under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to FW at law or in equity.

40. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

41. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

42. *NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by FW pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of FW. The parties intend for this provision to be read as broadly as possible.

43. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically states that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO FAIRFAX WATER; OWNERSHIP AND RETURN OF RECORDS; AUDIT; INTELLECTUAL PROPERTY DEVELOPED PURSUANT TO CONTRACT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; CONFIDENTIAL INFORMATION AND DATA SECURITY.

44. HEADINGS

The paragraph and section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

45. AMBIGUITIES

Each party has participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

46. NOTICES

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

TO THE CONTRACTOR:

Neptune Technology Group, Inc.
Attn: Zachary Drummond
1600 Alabama Highway 229
Tallahassee, AL 36078

TO FAIRFAX WATER:
Elizabeth B. Dooley, CPPO, CPPB, Procurement Manager
Fairfax Water Authority
8570 Executive Park Avenue
Fairfax, Virginia 22031

47. *NON-DISCRIMINATION NOTICE

FW does not discriminate against faith-based organizations.

48. INSURANCE REQUIREMENTS

The Contractor shall provide to the FW Procurement Manager a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to FW. The minimum insurance coverage shall be:

- a) Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers' liability with limits of \$100,000/100,000/500,000. FW will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b) Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.
- c) Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d) The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e) Insurance Against Intellectual Property Infringement – \$1,000,000 per occurrence.
- f) Additional Insured - Fairfax Water, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insured on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- g) Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the FW Procurement Manager immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify FW upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and FW notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- h) Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.
- i) Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. FW reserves the right to request additional information to determine if the

Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, FW may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for FW.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, Workers' Compensation insurance and Insurance Against Intellectual Property Infringement in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to FW immediately upon request by FW.

No acceptance or approval of any insurance by FW shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to FW for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to FW. The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

49. *ACCESSIBILITY OF WEB SITE

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any FW websites, or FW's presence on other third-party website, the Contractor shall perform such work in compliance with the Americans with Disabilities Act of 1990 (ADA).

50. ADA COMPLIANCE

Compliance with the Americans with Disabilities Act of 1990 (ADA), excluding web site accessibility as previously covered, shall be the sole responsibility of the Contractor. The Contractor shall defend and hold FW harmless from any expense or liability arising from the Contractor's non-compliance therewith. The Contractor's responsibilities related to ADA compliance, shall include, but not be limited to, the following:

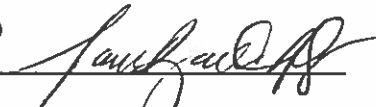
- a. **Access to Programs, Services and/or Facilities:** The Contractor shall ensure its programs; services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor shall provide equivalent services in an accessible alternate location or manner to ensure that persons with disabilities are not denied access to services.

- b. **Effective Communication:** The Contractor, upon request, shall provide appropriate aids and services to facilitate effective communication with qualified persons with disabilities so that such persons can participate equally in the Contractor's programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments, as required by the ADA.
- c. **Modifications to Policies and Procedures:** The Contractor shall make the necessary modifications to its policies and procedures to ensure that people with disabilities have an equal opportunity to enjoy the Contractor's programs, services, and activities, as may be required by the ADA. For example, individuals with service animals are welcomed in the Contractor's offices or facilities, even where pets are generally prohibited.
- d. The Contractor shall not place a surcharge on a person with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy.
- e. **Employment:** The Contractor shall not discriminate on the basis of disability in its hiring or employment practices.
- f. Responding to inquiries from the U.S. Department of Labor.

WITNESS these signatures:

FAIRFAX COUNTY WATER AUTHORITY

NEPTUNE TECHNOLOGY GROUP, INC.

AUTHORIZED SIGNATURE: 

AUTHORIZED SIGNATURE: 

NAME: JAMIE B HEDGES, P.E.
TITLE: GENERAL MANAGER

NAME AND TITLE: Mitch D. Elliott - Regional Manager

DATE: 6/13/24

DATE: June 3, 2024