

AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the 17th¹ day of June 2019, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and **RISING SUN, INC.** hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

WITNESSETH:

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

The Contractor shall provide removal of residuals at the Corbalis Water Treatment Plant in accordance with the following, in order of precedence: this Agreement for Service ("Agreement" or "Contract"); the Contractor's bid dated May 13, 2019 (Exhibit I); and FW's Invitation For Bid dated April 19, 2019 (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.

1.0 SCOPE OF SERVICES

The Contractor shall:

1.1 Scope of Work

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

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

i. Polymer Conditioned Residuals

Total residuals content by weight	15 – 40%
Calcium carbonate equivalency	0 – 1%
Aluminum	3.0 – 9.0%
pH	7.0 – 8.0

2. Dewatered residuals which contain Powdered Activated Carbon (PAC) can be expected to be black in color but will have the same general characteristics as the polymer conditioned residuals listed above.
3. The characteristics referenced above are expected to be typical of the residuals to be disposed of by land application. However, Fairfax Water does not guarantee that all residuals will meet all of the quantities or characteristics listed herein. The contractor shall be responsible for determining the actual content and characteristics of the residuals.

4. Residuals Quantities:

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

B. Project Scope: The Contractor shall provide management and disposal services to load, transport and land apply solids from Fairfax Water's Corbalis Water Treatment Plant. This Contract may also include the transport and disposal of liquid residuals to Fairfax Water's quarry located at 9600 Ox Road, Lorton, VA 22079.

1. The contractor selected for the services shall be required to provide the services generally in accordance with the following:
 - i. Remove dewatered residuals from the existing outdoor concrete storage pad or any other method approved in advance by FW. Outdoor concrete storage pad dimensions are approximately 180'wide x 180' deep x 12'High. For aerial view of outdoor concrete storage pad refer to Google Earth for plant solids storage pad.

- ii. Blend dewatered residuals which contain PAC with other dewatered residuals as required for disposal.
 - iii. Obtain and pay for all required land application, disposal or other permits or authorizations required from local, State and Federal regulatory agencies; maintain all permits or authorizations by renewal as required; pay all associated fees, and; keep all related agreements and other paperwork up to date. Provide copies of all permits, authorizations, agreements, invoices, and all other documentation and correspondence related to land application or disposal of the residuals to Fairfax Water.
 - iv. Land apply or dispose of by other approved method all dewatered residuals removed from the site in accordance with all applicable federal, state and local regulatory requirements, including development of nutrient management plans or other documentation required by regulation or through Virginia's implementation of the Chesapeake Bay Total Maximum Daily Load ("TMDL") for nutrients and sediment.
 - v. When emergency or unforeseen conditions with the residuals handling system at the Corbalis Treatment Plant occur, the contractor may be required to remove liquid residuals (3 to 4 percent residuals concentration) from the thickener tanks and transport to the FAIRFAX WATER quarry at Lorton for disposal. Contractor will be paid unit price per Supplemental Optional Bid Item for Emergency Work.
2. The contractor shall submit to Fairfax Water a disposal plan that includes:
- i. identification of disposal sites and authorizations, agreements and permits for use, demonstrating that the contractor is able to implement the program within 10 days from Notice of Award.
 - ii. A loading, transport and disposal plan including storage provisions conforming to any applicable federal, state and local regulatory requirements.
- C. Work Included: Contractor shall be responsible for all loading and unloading of his vehicles. Contractor shall furnish all labor, supervision, materials, plant, power, light, heat, fuel, water, tools, appliances, equipment, supplies, and other means of construction necessary or proper for performing and completing the Work. Contractor shall obtain and pay for all required permits, authorizations, agreements or other approvals. Contractor shall perform and complete the Work consistent

with safety of life and property and in strict accordance with the Contract Documents. Contractor shall repair, restore and clean structures and property that may be damaged or disturbed during the performance of the Work.

D. Contractor's Plant and Equipment: The Contractor shall be solely responsible for the adequacy of his plant and equipment.

E. Fairfax Water will provide fuel for the Contractor supplied loader.

1.2 Contractor's Use of Site and Premises

A. The Contractor shall furnish all equipment and personnel required to load dewatered solids from the concrete storage pad located at the plant site into appropriate vehicles for transportation off the plant site. The Contractor shall supply and leave at the plant site a rubber-tired loader with a minimum 4 yard bucket.

B. The Contractor's use of the plant site shall be restricted to the concrete storage pad and the access road to the concrete storage pad. The Contractor's operations shall be limited to the hours of 7:00 a.m. until 9:00 p.m., Monday thru Friday. No operations to be conducted on Holidays or weekends without written approval from Fairfax Water. The Contractor shall "push up" or stack residuals deposited at the pad so pile remains approximately 12 feet in height to utilize the full capacity of the pad and maintain a neat and orderly appearance at all times.

C. This Contract may include the hauling of liquid residuals (3 – 4% solids concentration) from the Corbalis Water Treatment Plant to an Authority-owned quarry in Lorton, Virginia. It may be necessary to transport liquid residuals, via tanker trucks, from thickener tanks to the quarry for disposal if solids dewatering equipment were to fail. The estimated quantity to be hauled for a maximum event is 75,000 gallons per day. A trucking operation may be confined to a 12-hour day as dictated by county code. This work is dependent on emergency conditions at the plant due to inability to operate belt filter presses and all site storage for liquid residuals are full.

D. Removal of dewatered residuals must occur within 14 days after production. Under no circumstance shall residuals remain at the disposal pad longer than 30 days. If residuals remain at the disposal pad longer than 30 days, Fairfax Water may levy liquidated damages as described in paragraph 2.28 and paragraph "E" (below) of this Contract Document. Contractor shall be considered in default if disposal pad reaches 75% of its capacity.

E. Fairfax Water shall have the option to remove residuals which have been stored at the site more than 30 days due to contractor's failure to perform. Fairfax Water's cost for loading, transportation and disposal of residuals removed from the plant site because of the contractor's failure to perform will be deducted from monies due to the contractor or his

surety shall be liable therefore. In addition, Fairfax Water may begin levying liquidated damages referred to in paragraph "D" (above).

- F. Site Administration: The Contractor shall be responsible for all areas of the Site used by him and all subcontractors in the performance of the Work. Contractor shall exert full control over the actions of all employees and other persons in the use and preservation of property and existing facilities except such controls as may be specifically reserved to the Owner or others. The Contractor may require all persons on the Site to observe the same regulations as he requires of his employees and representatives. Fairfax Water's employees, Authorized Representatives, Consultants, the Engineer and the Engineer's employees will not be subject to the provisions of this paragraph.
- G. Fairfax Water will provide snow and ice removal on the site and access road to the pad.
- H. Contractor may park tanker or trailers for short term or overnight upon approval of the Fairfax Water Representative.

1.3 Intent of Contract Documents

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

1.4 Land Requirements and Disposal Methods

- A. The contractor shall secure land sites for storage and disposal which have a total effective area in excess of the area required for the maximum annual residuals quantity. Throughout the entire contract period, the contractor shall maintain the required land site so that the disposal of solids is not interrupted. The list of land sites shall be updated quarterly.
- B. The contractor shall secure all necessary permits for the transportation, storage and land application of dewatered residuals as required by any local, State and Federal regulatory agencies, including development of nutrient management plans or any other plans required as a result of Virginia's implementation of the Chesapeake Bay TMDL for nutrients and sediment. Sufficient permits shall be maintained in hand at all times for 12 months of continuous operation and during entire contract period.
- C. The contractor shall secure all required temporary residuals storage sites located off the plant site and all permits required to store residuals during periods when soil application cannot occur.

- D. The contractor shall dispose of the dewatered residuals by land application or other approved method for farming and agricultural purposes as approved by local, State and Federal Agencies. Disposal methods shall comply with all environmental protection laws, ordinances, rules and regulations.
- E. The contractor may propose, as alternatives, any approved method of disposal or beneficial reuse, i.e. land filling, soil blending, incineration or other methods to inform Fairfax Water of all management options available.
- F. The contractor shall obtain all agreements with landowners, provide all equipment, materials, labor and services necessary to dispose of all dewatered residuals.

1.5 Satisfactory Completion of Work

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

1.6 For Information Purposes:

- Wet tons managed for previous 3-years are as follows:

2016 – 11,586 wet tons
2017 – 10,730 wet tons
2018 – 20,018 wet tons

- Residuals managed in 2018 were 100% land applied. Fairfax Water has not utilized the liquid form method of disposal in over ten years.
- Fairfax Water will be responsible for transferring residuals from the Thickener Tanks to the Contractor's tankers at Corbalis WTP if emergency is declared.

2.0 TERMS AND CONDITIONS

This Agreement is subject to the following Terms and Conditions:

2.1 Contract Term

The contract term shall be from June 17, 2019 through June 16, 2020. The contract may be renewed for up to four additional one-year periods. Contractor may submit a request for contract price increases once annually for each renewal year. Economic increases shall be limited to the increase specified in the Bureau of Labor Statistics for the 12-month period ending 90 days prior to the end of the then current contract year. Any subsequent renewal will be based on the Consumer Price Index – U (CPI-U). If the agreed upon index is a negative number, the contractor shall reduce contract rates by the same amount for new contract year.

2.2 Anti-Discrimination

Contractor certifies to FW that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act.

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

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.

C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

2.3 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.

2.4 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.

2.5 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.

2.6 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 follow-on 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 purchasing contact identified on the cover page. Contract changes shall be in writing and shall be on official FW Purchasing 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's 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 Purchasing 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.

2.7 Contractor's Responsibilities

- A. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the contract.
- B. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure, or its subcontractor's failure to protect such facilities and utilities.
- C. 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.

2.8 Delivery

- A. Contractor guarantees delivery of contract items within the timeframe specified herein. 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. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.
- C. Homeland Security Advisory System: If the Homeland Security Advisor System places the water / waste water industry in Codes Orange or Red, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m.,

Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor's yard, the Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor's risk and expense.

2.9 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.

2.10 Examination of Records

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

2.11 Venue; Waiver of Jury Trial

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

2.12 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's obligations under this contract.

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

2.13 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's obligations under the

contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.

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's 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.

2.14 No Waiver or Estoppel

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

2.15 Pass-through Price Increases and Decreases

A. Increases: FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.

B. Decreases:

1. Pass through price increases shall cease at the end of the then current contract year and contract pricing will return to the pre-pass through rate. The contractor will be eligible for and only upon request, the annual economic price increase as defined in subsection 2.1 above.

2. Prior to the end of the then current contract year, the pass through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.

C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

2.16 Payment Clauses Required in All Contracts

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

A. That any contract awarded by FW include the following clauses:

1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:

- a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
- b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.

3. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.

B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

2.17 Payment

- A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
- B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- C. Invoices: The Contractor shall submit invoices for items ordered, delivered and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or contract number and are subject to review and approval by FW Project Manager
- D. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- E. Refunds: If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- F. Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

2.18 Price Firm Period

Pricing shall be firm and fixed as originally offered and accepted for the first 12 months of the contract.

2.19 Price and Title

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

2.20 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.

2.21 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.

2.22 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.

2.23 Faith-Based Organizations

FW does not discriminate against faith-based organizations.

2.24 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.

2.25 Contract Security

- A. The Contractor shall furnish within 10 days after written notice of award by Fairfax Water has been delivered the following: (1) a performance bond in an amount equal to 100 percent of the contract sum conditioned on the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract, (2) one or more certificates of insurance evidencing the types and amounts of insurance coverage required to be maintained by the contractor under the Contract Documents.
- B. Any performance bond required hereunder shall be in the form included in these Contract Documents and shall be executed by a surety company legally authorized to do business as a surety in the Commonwealth of Virginia. In lieu of a payment or performance bond, the successful bidder may furnish a cash escrow or certified check payable to the order of Fairfax Water in the face amount required for such bonds.

2.26 Contractor Responsibilities

- A. The Contractor shall be responsible for all products and/or services as required by this contract. The use of subcontractors is prohibited unless:
 - 1. A request to include a subcontractor was included in the proposal and,
 - 2. The Contractor 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 to protect such facilities and utilities.
- D. Where the Contractor's Work may cause damage or disrupt existing FW property including but not limited to utilities, plant equipment, instrumentation and control systems, etc. the Contractor shall make arrangements necessary for the protection of such property. The Contractor, at its sole expense, shall immediately replace FW property removed or damaged by, or at the direction of, the Contractor or any Subcontractor to the Contractor. Replacements will be new and current technology unless otherwise provided for in these specifications or authorized by the FW Project Manager.
- E. Contractor shall return all work areas to the same or better condition than prior to start of Work. Contractor must notify the FW Project Manager of any area, piece of equipment, etc., that is damaged or not in the same or better condition than prior to start of Work. The Contractor will be responsible for repair, replacement, etc., of any such property, which is within the Contractor's area of responsibility and is found to be in need of repair/service by the FW Project Manager. Acceptance shall not occur until all such damages are either repaired or replaced or for which FW is reimbursed a fair and reasonable sum as negotiated and agreed to in writing, by the FW Project Manager.

2.27 Delays

- A. 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's Performance Bond (or other security as agreed to by FW prior to contract award); and to recover any additional costs for obtaining a replacement contractor, 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.

- B. By FW: The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the actions or inaction's 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.

2.28 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 or the Member deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, FW or the Member 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 or Member, as the case may be. Contractor's request and justification shall be subject to such substantiation and further inquiries as FW or Member may require.

2.29 Liquidated Damages

- A. Work shall begin upon receipt of purchase order or contract and all work shall be completed in 30 days as referenced per Paragraph 1.2.D. It is hereby understood and agreed by the Contractor that time is of the essence in the delivery of services of the character and quality specified in the offer document. In the event these specified services, are not delivered and the disposal pad is 75% capacity, there will be deducted, not as a penalty but as liquidated damages, the sum of \$1500.00 per day for each and every calendar day disposal pad remains at 75% capacity.
- B. Exception to above paragraph A is if the service be delayed by any act, negligence, or default on the part of FW, public enemy, war, embargo, fire, or explosion not caused by the negligence or intentional act of the contractor or his supplier(s), or by riot, sabotage, or labor trouble that results from a cause or causes entirely beyond the control or fault of the contractor or his supplier(s), a reasonable extension of time as the procuring public body deems appropriate may be granted. Upon receipt of a written request and justification for an extension from the contractor, the purchasing office may extend the time for performance of the contract or delivery of goods herein specified at the purchasing office's sole discretion for good cause shown.

2.30 Permits and Inspections

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

2.31 Priority Customer

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

2.32 Site Safety and Access

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

2.33 Superintendence by Contractor

- A. The Contractor shall have a competent Field Supervisor, satisfactory to FW, on the job site or available by phone at all times during the progress of the Work. The Contractor shall be responsible for coordinating all portions of the Work under contract except where otherwise specified in the contract documents, and for all safety and worker health programs and practices. The Contractor shall notify the Project Manager, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.
- B. The Contractor shall at all times enforce strict discipline and good order among the workers on the project. The Contractor shall not employ on the Project any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, subcontractors, FW or FW's separate Contractors and their subcontractors.

- C. FW may, in writing, require the Contractor to remove from FW property, any employee FW deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

2.34 Time Is Of The Essence

Time is of the essence! This is a time critical project! Once started, this project must continue without delay or interruption, and unauthorized delays by the Contractor are prohibited. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by obtaining the services of a qualified Contractor to complete the project services and charge any additional or increased costs to the defaulted Contractor.

2.35 Measurement Authority

- A. Each truck will be weighed at the Fairfax Water truck scale located on the plant site before and after loading.
- B. Payment for residuals disposal will be made monthly at the applicable contract unit price per wet ton of dewatered residuals loaded, weighed and removed from the plant site.
- C. Payment will be made on the basis of wet tons of dewatered residuals loaded, weighed and removed from the site by the contractor. No separate or additional payments will be made on account of residuals quantities being more or less than the estimated average residual quantities.
- D. Water shall not be added to the residuals prior to measurements being taken for payment.

2.36 Regulatory Requirements

- A. Compliance with the Law: Precautions shall be exercised at all times for the protection of persons and property. The safety provisions of all applicable laws, building and construction codes including, but not limited to, the U.S. Department of Labor Occupational Safety and Health Regulations for Construction promulgated under the Occupational Safety and Health Act of 1970 (PL 91-596) and under Section 107 of the Contract Work Hours and Safety Standards Act (PL 91-54), shall be observed. The U.S. Department of Labor Safety and Health Regulations shall be complied with except where state safety standards have been approved by the Secretary of Labor in accordance with provisions of the Occupational Safety and Health Act, in which case compliance with state

and local standards is required. The Contractor shall conduct his work so as to ensure the least possible obstruction to traffic. The Contractor shall provide for the safety and convenience of the general public and residents within the project limits and the protection of persons and property.

B. Coordination with Regulatory Agencies

1. Identify and contact all regulatory agencies having jurisdiction.
2. Identify all applicable rules, regulations and other requirements. Any changes in Rules and Regulations will be the responsibility of the Contractor to bear all costs and risks.
3. Demonstrate acceptance of proposed program by regulatory agencies having jurisdiction.

C. Development of Monitoring and Reporting Requirements

1. Identify all applicable monitoring and reporting requirements.
2. Develop system of monitoring and reporting.

D. Temporary residuals storage sites shall comply with all local ordinances, regulations and State and Federal regulatory requirements.

E. Dewatered residuals shall be applied at loading rates not to exceed those approved by the regulatory agencies and landowners.

F. Residuals and soil samples shall be collected and tested as required by the regulatory agencies.

G. All trucks leaving the Plant shall be clean so that residuals are not spilled or tracked onto roadways.

All trucks leaving the plant shall meet all roadway weight limits at all times.

3.0 COMPENSATION

Dewatered Polymer Conditioned Residuals	\$23.73 ton
Emergency Work – Removal of Liquid Residuals from Thickener Tanks, 75,000 gallons/day	\$24,000/day

FAIRFAX COUNTY WATER AUTHORITY

8570 Executive Park Avenue

RISING SUN, INC.

11188 Bears Den Rd.

Fairfax, VA 22031

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

By: 

Name: Donald R. Legg

Title: Procurement Manager

Date: 6/26/19

Marshall, VA 20115p

Phone: (540) 270-1693
Fax: (540) 364-1684

By: 

Name: RON MERILAX

Title: PRES.

Date: 6/25/19