

AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the 10th day of January, 2019, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and **NEPTUNE TECHNOLOGY GROUP 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 5/8" through 1" Cold Water Meters, as needed, in accordance with the following, in order of precedence: this Agreement for Service ("Agreement" or "Contract"); the Contractor's bid dated November 1, 2018 (Exhibit I); and FW's Invitation for Bids dated September 28, 2018 (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. CONTRACT SPECIFICATIONS AND RELATED REQUIREMENTS

1.1 Summary

This section Includes: Manufacturing requirements for Positive Displacement, Singlejet and Multijet Meters complete with necessary accessories as required by Contract documents and intended for use in a potable water system. Cold Water Meters shall be newly manufactured.

1.2 Reference Standards

All products shall comply with applicable provisions of the following, except as otherwise required by Contract Documents:

- A. ANSI/AWWA C700-09 or most recent edition, American National Standard for Cold Water Meters Displacement Type, Bronze Main Case.
- B. ANSI/AWWA C707-10 or most recent edition, American National Standard for Encoder Type remote Registration System for Cold Water Meters.
- C. ANSI/NSF 372 Drinking Water System Components – Lead Content (components in contact with potable water)

- D. ANSI/AWWA C708-15 or most recent edition, American National Standard for Cold Water Meters Multijet Type
- E. ANSI/AWWA C712-15 or most recent edition, American National Standard for Cold Water Meters Singlejet Type

1.3 Meter Requirements

A. Type

- 1. Positive Displacement: Nutating disc, thermoplastic polymer molded without secondary machining, stainless steel shaft.
- 2. Singlejet and Multijet: Lead free bronze body, synthetic sapphire bearing/impeller pivots. Bronze or cast iron bottom plate where applicable.

B. Maincase Requirements

- 1. Positive Displacement, Singlejet, and Multijet type meters (5/8 -1") shall conform to the "Standard Specifications for Cold Water Meters" C700 latest applicable revision issued by AWWA.
- 2. Fairfax Water requires that all water meters submitted in this proposal be compliant with NSF/ANSI 61, Annex G and Annex F. Meters shall be made of "lead free" alloy as defined by NSF/ANSI 61, Annex G and Annex F. Brass water meters shall comply with the Safe Water Drinking Act, and the U.S. Environmental Protection Agency.
- 3. The contractor shall provide certification from an independent third party testing organization that the products submitted meet NSF/ANSI Standard 61, Annexes F & G.
- 4. All lead free maincases shall be guaranteed free from manufacturing defects in workmanship and material for the life of the meter.
- 5. The size, model and direction of flow through the meter shall be marked permanently on the outer case.
- 6. The manufacturer name and 8-digit serial number shall be imprinted on each register lid and outer case. The first 2 digits of the serial number shall indicate the year of manufacturer, or the manufacturer shall provide a list of serial numbers that indicate the date of manufacturer of each meter.
- 7. Each meter shall include a serialized bar coded tag or sticker.

8. Pressure requirement: Meter shall register within standard limits at 150 psi, and shall be able to withstand 250 psi without any leakage or part failure.
9. Chemical washing or coatings shall not be an acceptable alternative to "no lead" brass.

C. Performance Requirements:

To ensure accuracy, each meter must be accompanied by a factory test tag certifying the accuracy at the flows required by AWWA C700.

D. Meter Materials

1. Bottom covers: Breakable cast iron.
2. Bolts, nuts and washers, including casing bolts: type 316 stainless steel.

E. Connection

1. 1-inch and smaller: threaded ends and washers, without coupling nuts and tailpieces.
2. Register Type: Straight Read or Encoder.

F. Registers

1. Read in US Gallons.
2. Hermetically sealed so not affected by prolonged submergence.
3. Registers shall display 7 digits with either 6 number wheels plus a fixed zero figure as the right hand digit or 7 number wheels.
4. Provide a low flow leak indicator on dial face.
5. Lid: Hinge design to insure that the lid free falls into a closed position when flipped closed.
6. Lid shall be molded and include lifting tab.

G. Approved Manufactureres

1. Badger Meter, Inc.

2. Hersey-Meters
3. Master Meter
4. Neptune Technology Group, Inc.
5. Sensus Metering Systems
6. Metron-Farnier

H. Encoder Meters ONLY

1. Wall touch pads shall be furnished with a rectangular adapter plate, 4 ½-inch wide x 3 inch high (plus or minus ½-inch), which will cover the existing mounting space created by removal of a remote generator register.
2. Touch pad shall permit interrogation of the meter without requiring special alignment, when pit lid is submerged, or covered with small debris. The manufacturer shall provide instructions and all necessary installation hardware.
3. Wall mount touch pad shall be sturdy, tamperproof, and protected with waterproof seals.
4. Touch pads shall be programmed for three-wire installation and to read in the thousand gallons.
5. Each register ID number and meter serial number shall be the same.
6. Remote Reading Capability: Reads exact position of number wheels at register in 1,000 gallon increments.

1.4 Approved Products

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

1.5 Condition of Materials on Delivery

All materials shall be protected to insure against damage while in transit. All materials shall be in new and undamaged condition upon delivery. Materials found

damaged or otherwise found unsuitable will be rejected. The supplier shall be responsible for replacing all rejected materials, including all shipping cost.

1.6 Estimated Quantities and Delivery Locations

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

Orders will be for delivery to Fairfax Water's Chantilly Maintenance Facility and Property Yard at the following address:

4400 Henninger Ct.
Chantilly, VA 29151

1.7 Packaging and Packing List

- A. All goods shall be package in a manner to prevent damage during shipping and unloading.
- B. Each box of meters shall be clearly labeled with the beginning and ending serial numbers on the outside of the box.
- C. Each shipment of meters shall include an electronic file (.txt or MS excel) that includes a complete list of the serial numbers of the meters shipped.
- D. A packing list shall accompany every shipment. The absence of a packing slip or required shipping order information may cause refusal of the shipment. The packing list shall contain: Purchase Order number, Delivery release number, item description, quantity shipped, quantity ordered, and quantity backordered (if any).

1.8 Priority Customer

Contractor understands and acknowledges that FW provides services that are essential to the health and welfare of the public. Failure of a Contractor to provide meters under any Contract may jeopardize FW's ability to provide timely services, which may affect the health and welfare of the public served by FW. In the event of product shortages at any level of the production to delivery chain, Contractor agrees and affirms that FW will be given the earliest possible notice and the highest priority for allocation of the item(s) listed herein. To the extent that the Contractor must prioritize and/or allocate delivery among its customers, the requirements of FW will be honored before contract items are provided to a customer with no

obligations with regard to the public health and welfare. To the extent that contract items are insufficient to meet the requirements of all of the clients who are responsible for the health and welfare of the public, the meters will be allocated in a manner deemed to be fair and reasonable to all such clients.

1.9 Warranty

- A. In addition to any other warranties expressed or implied, the specific warranties of Merchantability and Fitness for a Particular Purpose apply to all orders placed as a result of this solicitation.
- B. If at any time, any contract item fails to conform to the contract specifications, the Contractor shall, at no additional cost to FW, promptly replace the defective item. If the Contractor is unable to remedy such nonconformity during a time period consistent with the requirements, FW may undertake to remedy the nonconformity and in such case Contractor shall reimburse FW for any costs thereby incurred.
- C. Provide one-year parts and labor warranty. Warranty is to be effective upon receipt at FW. Warranty is to be with either the manufacturer or a service facility authorized by the manufacturer to perform warranty services. All costs for warranty service (including shipping and insurance) shall be included in the warranty and at no additional cost to FW.

2 STANDARD TERMS AND CONDITIONS

2.1 Term of Contract and Contract Renewal

- A. Term: The contract will be effective for one-year beginning on the date of contract award. FW reserves the unilateral option to renew the contract annually thereafter for up to four additional one-year periods, subject to the terms and conditions specified herein.
- B. Renewal: Notification of renewal shall be by the issuance of a renewal purchase order/contract. Renewal will be at the then current rates, terms and conditions (see section 2.3 "Annual Economic Price Adjustment"). Issuance of a purchase order for the optional years will constitute notice of renewal. Failure to renew by the expiration date of the then current contract year will not automatically cancel the contract. FW may retroactively renew the contract at any time prior to the last day of the following contract year providing that FW has not formally canceled the contract.

2.2 Additional Quantities

FW reserves the right to purchase additional quantities of the goods or services specified herein at the contract price for up to one year from the date of contract award. Contractor agrees to provide the contract items, or the then current version of the contract items at the original contract price.

2.3 Annual Economic Price Adjustment

- A. In the case of annually renewable contracts, the 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. Requests for contract price increases must be submitted at least 30 days prior to the end of the contract year.
- B. Annual rate increases will be based on the Bureau of Labor (BLU) Consumer Price Index-U (CPI-U).
- C. Negative BLS index: If the agreed upon index is a negative number the contractor shall immediately reduce contract rates by the same amount for the duration of the contract year.
- D. Contractor agrees to and accepts the terms of items A, B, C and D above for the duration of the contract.

2.4 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 contractor.
- 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.

2.5 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.

2.6 Arrearage

The Contractor agrees that it shall make diligent efforts to avoid becoming in arrears during the Term of any Contract awarded hereunder.

2.7 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.

2.8 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.

2.9 Cancellation

FW may cancel this solicitation at any time and for any reason prior to contract award.

2.10 Compliance with Laws, Regulations and Codes

The Offeror hereby represents and warrants that:

- A. It is qualified and properly licensed to do business in the Commonwealth of Virginia and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;
- C. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It shall obtain at its expense, all licenses, permits, insurance, and governmental approval, if any, necessary to the performance of its obligations under this Contract.

2.11 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.

2.12 Contractor's Responsibilities

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

2.13 Debarment Status

Contractor certifies that it is not currently debarred by the federal government, the Commonwealth of Virginia, or any agency or department thereof from submitting a bid or proposal in connection with any procurement project and that it is not an agent of any person or entity that currently is so debarred.

2.14 Delivery

In the case of solicitations that require delivery to FW:

- A. Contractor guarantees delivery of contract items within the timeframe specified herein or as indicated in the Contractor's bid submission form. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of contract and may be grounds for a declaration of default in addition to any other remedies the Members may be entitled to.
- B. Deliveries must be made within the delivery time specified in the bid submission document. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.
- C. Homeland Security Advisory System: If the Homeland Security Advisor System places the water / waste water industry in Codes Orange or Red, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor's yard, the Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor's risk and expense.

2.15 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.

2.16 Examination of Records

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

its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

2.17 Faith-Based Organizations

FW does not discriminate against faith-based organizations.

2.18 Familiarity with Specifications

Contractor shall bear responsibility for thoroughly examining this solicitation in its entirety.

2.19 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.

2.20 Governing Law; Venue; Waiver of Jury Trial

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

2.21 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.

2.22 Incorporation by Reference

This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the

solicitation. By submitting a bid in response to this solicitation, Contractor acknowledges the VPPA and agrees to be bound by it. A copy of the VPPA is available for inspection at the Purchasing Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website:

(http://www.eva.state.va.us/dps/Manuals/docs/VPPA_2008.doc).

2.23 Indemnification and Responsibility for Claims and Liability

Contractor is bound by the following:

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.
- B. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- D. The Contractor shall 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 and all loss, including Attorneys' fees arising out of any such claim.

2.24 Insurance Requirements

- A. In addition to the mandatory insurance requirements listed in this Section and, at the request of FW, Contractor may be required to provide a list of all insurance claims made against it within the past 36 months. FW reserves the right to reject any bid if in FW's opinion the amount or number of claims is deemed to be excessive. Contractor's failure to comply with this requirement may result in rejection of its bid. If no claims have been made, then the Contractor shall so state in its bid. Fairfax Water may require such information from the Contractor as it deems necessary to assess the Contractor's financial ability to pay any deductibles with respect to the insurance policies required hereunder.

- B. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.
- C. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.
- D. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract
- E. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:
1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
 2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

◆ General Aggregate Limit (Other than Products-Completed Operations)	\$1,000,000
◆ Products-Completed Operations Aggregate Limit	\$ 500,000
◆ Personal & Advertising Injury Limit	\$ 500,000
◆ Each Occurrence Limit	\$ 500,000
For Construction Contracts:	
◆ Directors & Officers – Errors & Omissions	\$2,000,000
- F. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage

with a combined single limit of at least \$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.

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

2.25 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, member, 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, member 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).

2.26 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: When and as pass through price increases are reduced or eliminated, the Contractor shall reduce the unit price accordingly.
- C. Pass through price increases will not be a substitute for poor planning by the Contractor. No pass through increase will be allowed for the first contract year. In subsequent years, such requests cannot be submitted until after the sixth month of the then current contract year. Price increases will not be retroactive.

2.27 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. Offerors shall include in their offer submissions either: (i) if an individual contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
 - 3. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
 - 4. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
- B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

2.28 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 Contractor 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 Offeror 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.

2.29 Precedence of Terms

These General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any

Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

2.30 Price Firm Period

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

2.31 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.

2.32 Purchase and Sale Transaction

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

2.33 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.

2.34 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.

2.35 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.

2.36 Warranty

- A. The contractor warrants that, unless otherwise specified, all materials and equipment incorporated in the work under the contract shall be new, in first class condition, and in accordance with the contract documents. The contractor further warrants that all workmanship shall be of the highest quality and in accordance with contract documents and shall be performed by persons qualified at their respective trades.
- B. Materials and equipment shall be fully guaranteed against defects in material and workmanship for a period of 12 months following date of final acceptance. Should any defect be noted by the FW, the Project Manager will notify the contractor of such defect or non-conformance? Notification will state either (1) that the contractor shall replace or correct, or (2) FW does not require replacement or correction, but an equitable adjustment to the contract price will be negotiated. If the contractor is required to correct or replace, it shall be at no cost to FW and shall be subject to all provisions of this clause to the same

extent as materials initially delivered. If the contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the contractor the costs occasioned thereby or obtain an equitable adjustment in the contract price.

- C. Work not conforming to these warranties shall be considered defective.
- D. This warranty of materials and workmanship is separate and independent from and in addition to any of the contractor's other guarantees or obligations in this contract.
- E. NOTE: Any implied warranties, including but not limited to the warranty for "Merchantability and Fitness for A Particular Purpose" cannot be waived and are a mandatory part of this solicitation and any ensuing Contract.

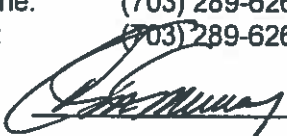
3.0 COMPENSATION

Neptune T-10 Displacement Meter, 5/8-Inch, Straight Read	\$32.88 ea
Neptune T-10 Displacement Meter, 5/8-Inch, Touch Read	\$70.00 ea
Neptune T-10 Displacement Meter, 5/8 X 3/4-Inch, Straight Read	\$32.88 ea
Neptune T-10 Displacement Meter, 5/8 X 3/4-Inch, Touch Read	\$70.00 ea
Neptune T-10 Displacement Meter, 3/4-Inch, Straight Read	\$49.00 ea
Neptune T-10 Displacement Meter, 1-Inch, Straight Read	\$81.00 ea
Neptune T-10 Displacement Meter, 1-Inch, Touch Read	\$120.00 ea

FAIRFAX COUNTY WATER AUTHORITY

8570 Executive Park Avenue
Fairfax, VA 22031

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

By: 

Name: Charles Murray

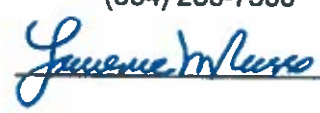
Title: General Manager

Date: 1/10/19

NEPTUNE TECHNOLOGY GROUP INC.

1600 Alabama Hwy 229
Tallassee, AL 36078

Phone: (302) 824-6918
Fax: (334) 283-7380

By: 

Name: Lawrence M. Russo

Title: VP, Finance

Date: January 8, 2019