

FAIRFAX WATER - CONTRACTOR AGREEMENT
ATTACHMENT 3: Job Order Contract (JOC) for Construction Services

THIS AGREEMENT for a Job Order Contract (JOC or Contract) for Construction Services, executed in two (2) originals, effective this 8th day of February, 2019, is by and between FAIRFAX WATER (herein referred to as the "FW" or the "Owner"), and THE MATTHEWS GROUP, INC. t/a TMG CONSTRUCTION CORPORATION (herein referred to as the "Contractor").

In consideration of the promises made herein and other good and valuable considerations, the following terms and conditions are hereby agreed to between FW and Contractor.

Article 1
CONTRACT DOCUMENTS

- 1.1 This Agreement and the Contract Documents as specified below, in their entirety, comprise the contract, and all are as fully a part hereof as if attached to this Agreement or repeated herein.
- 1.2 The Contract Documents consist of:
 - A. This Agreement
 - B. FW's Invitation for Bid (IFB) No. 18-71 (which includes the Contract Terms and Conditions), including any Addenda
 - C. IFB Attachment 1- RS Means Facilities and Construction Cost Data and/or RS Means Repair and Remodeling Cost Data (UPB)
 - D. The Contractor's bid submission (all parts)
 - E. Notice of Award
 - F. Performance and Labor and Material Payment Bonds and Insurance Certificates provided
 - G. Job Orders, Requests for Price Proposals, and Detailed Scopes of Work (including and referenced supplemental Specifications and/or drawings) issued under the Contract
 - H. The Contractor's Price Proposals submitted under the Contract
 - I. Written Modifications to the Agreement, signed by both parties, issued after the Agreement has been executed

The order of precedence should a discrepancy amongst the Contract Documents arise is as provided herein at Section 1.2 (and at the IFB at Section 6.1) and as further provided in the IFB at Section 6.53.

Article 2
STATEMENT OF WORK

- 2.1 The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the Work for each Project, as required by the Contract Documents.

Article 3
CONTRACTOR

- 3.1 The Contractor is an independent Contractor and nothing in this Agreement shall be construed as implying the relationship of principal and agent or employer and employee between FW and Contractor, the Contractor's employees or designees. The independent Contractor shall exercise daily control over its employees' activities.

Article 4
TIME OF COMMENCEMENT AND COMPLETION

- 4.1 The Base Term of the Contract is one (1) year from the date of the execution of this Agreement. The Contract may be renewed based upon on the same terms and conditions, other than Bid Adjustment Factors, at the expiration of the Base Term upon mutual agreement of the parties. The renewal may be for up to two (2) additional one-year periods (Option Terms). The total duration of this Contract, inclusive of all Option Terms shall not exceed three (3) years.
- 4.2 The Contractor shall commence the Work promptly upon the date established in each Job Order under the Contract; and, the Work shall progress with diligence and in the order which may be reasonably required.
- 4.3 Time is of the essence. The Contractor agrees to achieve Final Completion of the Work within the time specified in each Job Order (therein designated as the Job Order Completion Time).
- 4.4 The amount of Liquidated Damages, if any, shall be assessed on a Job Order by Job Order basis pursuant to Contract Terms and Conditions contained in the IFB. This provision for Liquidated Damages does not bar County's right to enforce other rights and remedies against Contractor, which are otherwise legally enforceable, including but not limited to, specific performance or injunctive relief.

Article 5
CONTRACT SUM

- 5.1 Contractor acknowledges the Contract is an indefinite-quantity contract for the improvement, alteration, repair and construction of mechanical infrastructure, or other real property.
- 5.2 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by modification or as otherwise provided in the Contract Documents, the County agrees to pay, and the Contractor agrees to accept as full payment, the Job Order Amount stated on each Job Order issued under the Contract in consideration of the due fulfillment of the conditions of the Contract.

Article 6
PROGRESS PAYMENTS

- 6.1 The Contractor hereby agrees that on or about the last day of every month during the performance of the Work the Contractor will deliver to the County an application for Payment for the Work for the preceding thirty (30) days in accordance with the provisions of the Contract Terms and Conditions. Each Job Order will be invoiced separately by the Contractor. This date may be changed upon mutual agreement, stated in writing, between the County and Contractor. Payment under this Contract shall be made as provided in the Contract Terms and Conditions.

Article 7
IMMIGRATION REFORM AND CONTROL ACT OF 1986

- 7.1 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.

Article 8
NON DISCRIMINATION

- 8.1. During the performance of this Contract, the Contractor agrees as follows:
- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - B. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.

- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement.
- 8.2. The Contractor will include the provisions of the foregoing paragraphs, 1, 2, and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Article 9
DRUG-FREE WORKPLACE

- 9.1 During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purpose of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

Article 10
OTHER REQUIREMENTS

- 10.1 The Contractor shall submit the Performance Bond, Labor and Material Payment Bond, Bid Bond and Certification of Insurance as required by the Contract Documents.
- 10.2 To the extent required by the Commonwealth of Virginia (see e.g. 54.1-1100 et seq. of the Code of Virginia) or FW, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.
- 10.3 A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with FW pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. FW may void any

Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Article 11

ENTIRE AGREEMENT AND SEVERABILITY

- 11.1 This Agreement represents the entire and integrated contract between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Agreement may be amended or changed only by a Modification. Nothing contained in the Contract Documents shall create any contractual relationship between FW, or any agent, consultant, or independent contractor employed by FW and any subcontractor, sub-subcontractor, supplier or vendor of the Contractor, but FW shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.
- 11.2 In the event that any provision of this Agreement shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding, and in full force and effect.

Article 12

GOVERNING LAW/FORUM

- 12.1 This Agreement shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia, without giving effect to its conflicts of laws provisions. 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.

Witness the following signatures:

FAIRFAX WATER

8570 Executive Park Avenue
Fairfax, Virginia 22030

Phone: (703) 289-6261

By  _____

Name Charles Murray

Title General Manager

Date 3/1/19

**THE MATTHEWS GROUP, INC. t/a
TMG CONSTRUCTION
CORPORATION**

18915 Lincoln Rd
Purcellville, VA 20132

Phone: (540) 751-4465

By  _____

Name Tatiana C. Matthews

Title President

Date 2/8/2019