



MORIN BUILDING  
8570 EXECUTIVE PARK AVENUE  
FAIRFAX, VIRGINIA 22031

## INVITATION FOR BIDS

**Number:** IFB 24-266

**Requirement:** Water Storage Tank Cathodic Protection System Inspection, Maintenance, and Repair

**Date Issued:** October 15, 2024

**Deadline for Questions:** October 21, 2024  
Prior to 2:00 PM Local Prevailing Time

**Bid Due Date:** October 30, 2024  
Prior to 1:00 PM Local Prevailing Time

**Bids to be Delivered to:** Procurement Department  
Fairfax Water  
8570 Executive Park Avenue  
Fairfax, Virginia 22031

**Procurement Contact:** Daniel W. Gardner, CPPB, VCA  
Procurement Specialist I  
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### SECTION 1

#### 1. SUMMARY INFORMATION AND SUBMISSION OF BIDS

##### 1.1 Introduction

The Fairfax County Water Authority, doing business as Fairfax Water (FW) was created under the Virginia Water and Waste Authorities Act pursuant to resolutions adopted by FW on September 26, 1957. FW is managed by a ten-member Board of Directors appointed for three-year terms by the FW Board of Supervisors.

##### 1.2 Objective

The objective of this Invitation for Bid (IFB) is to award an annual Contract to a qualified Bidder to provide FW with inspection, testing, maintenance, and repair services for rectifier systems used for cathodic protection purposes on various water storage tanks as described and defined herein. There shall be no minimum order quantity.

##### 1.3 Cancellation

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

##### 1.4 Familiarity with Specifications

Each Bidder is responsible for thoroughly examining this solicitation in its entirety. Any questions or comments regarding the proper meaning or intent of any aspect of this solicitation, shall be submitted in writing to the Procurement Contact prior to the deadline identified on the cover sheet of this solicitation.

The submission of a Bid by the Bidder in response to this solicitation shall be deemed to constitute a representation on the part of such Bidder that it has thoroughly examined this solicitation and has submitted any and all questions and comments they may have regarding the meaning or interpretation of this solicitation to FW in the manner prescribed herein.

##### 1.5 Questions and Communications

All contact between prospective Bidders and FW with respect to this solicitation will be formally held at scheduled meetings or in writing through the Issuing Office. Questions and comments regarding the meaning or interpretation of any aspect of this solicitation must be submitted in writing to the Procurement Contact identified on the cover page to this solicitation and must be received on or before the deadline for submitting questions. Only written questions will be accepted. Questions and/or comments which are submitted after the deadline set forth on the cover page to this solicitation may be answered.

FW shall respond to all timely questions and comments that are properly submitted and are deemed to address a matter that is relevant and substantive in nature within a reasonable period of time, in the form of a written Addendum that shall be posted on the FW Procurement Department website. It is the responsibility of each Bidder to access this information. Oral communications between FW and any Bidder regarding the interpretation or meaning of any aspect of this IFB are not authorized and may not be relied upon for any purpose.

##### 1.6 Pre-Bid Conference and Site Visit

A Pre-Bid Conference and Site Visit **will not** be held.

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**1.7 Bid Opening and Instructions for Submitting Bids**

The deadline for receiving Bids and the location for opening Bids is shown on the cover sheet. Bids will be opened immediately following the deadline for receiving Bids. Bids will be opened in accordance with the provisions of the Virginia Public Procurement Act.

Interested parties may attend the Bid opening virtually from the following Microsoft Teams link:

[Join the meeting now](#)

Meeting ID: 245 087 263 274

Passcode: P34KCR

**Dial in by phone**

[+1 571-348-5786,,579039119#](#) United States, Lorton

[Find a local number](#)

Phone conference ID: 579 039 119#

All Bids must be submitted in a sealed package(s), no other form of submission will be accepted (i.e., E-mail, Facsimile, etc.). Bid packages must be identified on the outside as follows:

From: _____	_____
Name of Bidder	Due Date
_____	_____
Street	IFB No.
City, State, Zip Code	IFB Title

S A M P L E

Attn: Daniel W. Gardner, CPPB, VCA  
Procurement Specialist I

**1.8 Bid Submission Form**

Attachment 1 Bid Submission Form must be completed and signed by an agent who is fully authorized to bind the individual or organization submitting the offer to sell, to the terms, conditions and Specifications contained herein as well as any addenda to this solicitation.

**1.9 Proprietary Information**

A. Except as provided herein or as otherwise set forth in §2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 *et seq.*, the “Act”), all proceedings, records, contracts and other public records relating to procurement transactions shall be open to inspection in accordance with the Virginia Freedom of Information Act (Va. Code Ann. §2.2-3700 *et seq.*, the “Virginia FOIA”).

B. A Bidder, Offeror or Contractor shall have the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which shall not be subject to inspection pursuant to either §2.2-4342 of the Act or the Virginia FOIA, by submitting to FW prior to or at the time of submission of its proposal or Bid a separate, written Notice on its letterhead stationery setting forth the following: (i) a statement indicating that the Bidder, Offeror, or Contractor wishes to invoke the protections of this section; (ii) an

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identification of the data or other materials for which protection is sought; and (iii) a statement with regard to why protection is necessary.

### 1.10 Addenda to the IFB

- A. FW reserves the right to amend this solicitation at any time prior to the deadline for submitting Bids. If it becomes necessary to revise any part of this IFB, notice of the revision will be given in the form of an Addendum that will be provided to all prospective Bidders who are on record with FW as having received this solicitation. If, in the opinion of FW, the deadline for the submission of Bids does not provide sufficient time for consideration of any Addendum, then such deadline may be extended at the discretion of FW.
- B. It shall be the responsibility of each Bidder to contact the Procurement Contact identified on the cover page to this solicitation prior to submission of a Bid hereunder in order to determine whether any Addenda have been issued in connection with this procurement. Notwithstanding any provision to the contrary, the failure of any Bidder to receive any Addenda shall neither constitute grounds for withdrawal of its Bid, nor relieve such Bidder from any responsibility for incorporating the provisions of any Addenda in its Bid.

### 1.11 Receipt of Addenda

Acknowledge receipt of each addendum by signing it and submitting it by the Bid deadline. Failure to return a signed addendum may result in a Bid being determined non-responsive.

### 1.12 Late Bids

Bids or unsolicited amendments to Bids arriving after the Bid submission deadline will not be considered.

### 1.13 Public Notice of Award

Public notice of Award will be posted on the official FW web site <http://www.fairfaxwater.org/procurement>

### 1.14 Definitions

- A. **Award** – means the decision by FW to execute a Contract after all necessary approvals have been obtained.
- B. **Bid** – means the response by a Bidder to an Invitation for Bids issued by a procurement agency to obtain goods or services.
- C. **Bidder** – means any person submitting a response to an IFB.
- D. **Contract** – means the formal agreement as a result of this solicitation.
- E. **Contract Completion** – means the point in time when FW Project Officer confirms in writing that the Contract has been completed as contracted for and the Contractor is released from any further obligations. All remaining payments due the Contractor shall be approved for payment at this time.
- F. **Contractor** – means the successful Bidder receiving a Contract as a result of this solicitation.
- G. **Default** – means that the Contractor has failed to fulfill its contractual obligations properly and on time.
- H. **FW** – means Fairfax Water. The terms Owner and FW have the same meaning.
- I. **Notice** – The term “Notice” or the requirement to notify means a written communication delivered in person, by facsimile, email, or by certified or registered mail to the individual or firm, or to an officer of the Contractor for whom it is intended.

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- J. **Owner** – FW Authority.
- K. **Project** – The term “Project” means the same as the phrase “the Work.”
- L. **Project Officer** – means FW employee assigned to this project for purposes of oversight of the project. The Project Officer is responsible for all aspects of the Contract (excluding Contract modifications) after Contract Award, including but not limited to approving design changes, and authorizing payment for completed work.
- M. **Specifications** – The term “Specifications” describes the physical or functional characteristics or the nature of a good, service or construction item required. It may include a description of any requirement for inspecting, testing, or preparing a good, services or construction item for delivery.
- N. **Work** – The word “Work” shall include all material, labor equipment and tools, appliances, machinery, transportation, and appurtenances necessary to perform and complete the Contract, and any such additional items not specifically indicated or described which can be reasonably inferred as belonging to the item described or indicated or as required by industry practice, custom or usage to complete the project as proposed by the Bidder and accepted by FW.

### 1.15 Contract Award

- A. FW anticipates awarding one contract as a result of this IFB. The award, if made, will be made to the Bidder who is the lowest responsible Bidder submitting the lowest responsive Bid on the Total Bid Price for all Bid Items.
- B. Whenever the lowest responsive and responsible Bidder is a resident of a state other than Virginia and such state under its laws allows a resident Contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible Bidder who is a resident of Virginia and is the next lowest Bidder. If the lowest Bidder is a resident Contractor of a state with an absolute preference, the bid preference shall not be considered.

### 1.16 Term of Contract

- A. The initial term of the Contract shall commence on the date the Contract is fully executed by FW and expiring on the last day of the 12th month following execution of the Contract by FW (Initial Contract Term), unless otherwise stated as provided in the Contract Documents.
- B. This Contract may be renewed for a term not to exceed one (1) year (‘Renewal Contract Term’) by written Notice given by FW at any time prior to 30 calendar days after expiration of the preceding Initial Contract Term or Renewal Contract Term. No representative of FW has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein. FW, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed four (4) additional one-year periods at the same terms and conditions. If funding is not available to complete orders during the Initial Contract Term and the four Renewal Contract Terms, FW reserves the right to renew the Contract until all orders have been received.

### 1.17 Annual Economic Price Adjustment

- A. Contractors may submit a request for a contract price increase once annually. Any annual increase in prices or rates shall be limited to the most recently published Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Arlington-Alexandria (unadjusted for seasonal changes) for the 12-month period ending 90 days prior to the end of the then current

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contract year. The CPI-U for Washington-Arlington-Alexandria (unadjusted for seasonal changes) is the default index for the duration of any resultant contract.

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

### 1.18 Contractor's Responsibilities

- A. The Contractor shall be responsible for all products and/or services as required by this solicitation. The use of subcontractors is prohibited unless:
1. A request to include a subcontractor is included in the solicitation submission and,
  2. The Bidder shall submit a separate list in Attachment 2 – References for each proposed subcontractor that includes three references for similar projects completed within the past five (5) years.
  3. The Bidder receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties.
- B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the contract.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non-FW property as a result of its failure 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 unless otherwise provided for in these specifications, or authorized by the FW Project Officer.

### 1.19 References

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

### 1.20 Authorization to Transact Business in Virginia

Each Bidder that is organized or authorized to transact business in the Commonwealth of Virginia pursuant to Title 13.1 or Title 50 of the Virginia Code shall include with its Bid the identification

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number issued to it by the Virginia State Corporation Commission. Any Bidder that is not authorized to transact business in Virginia as a foreign entity under Title 13.1 or title 50 of the Virginia Code or as otherwise required by law shall include in its Bid a statement describing why the Bidder is not required to be so authorized.

### 1.21 Brand Names

In the case of Bids specifying brand names or models:

- A. Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Bidders to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article that FW, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. Each Bidder is responsible to clearly identify the product being offered (by manufacturer's name, model, part number, etc.) and to provide sufficient descriptive literature, catalog cuts and technical detail to enable FW to determine if the product offered meets the requirements of the solicitation. Failure to furnish adequate data for evaluation purposes may result in declaring an offer non-responsive. Unless the Bidder clearly indicates that the product offered is an "equal" product, such Bid will be considered to offer the brand name product specified in this solicitation.
- B. For purposes of this solicitation and any contract that may result here from, FW's designation of any one or more manufacturers and/or suppliers as "preapproved" or "acceptable" shall signify only that such manufacturers and/or suppliers previously have submitted work samples or the like to FW which satisfied FW's requirements. FW's designation of any one or more manufacturers and/or suppliers as "preapproved" or "acceptable" shall in no event be deemed or construed to be a representation or warranty on the part of FW of any such manufacturer's or supplier's capability or capacity (in terms of financial wherewithal, personnel and equipment availability, managerial ability or otherwise) of performing any of the requirements of this solicitation in accordance with the terms and conditions hereof. Each Bidder shall conduct such independent investigation into the qualifications, experience and abilities of its selected manufacturers and suppliers as it deems appropriate under the circumstances.

### 1.22 Debarment Status

By submitting a Bid in response to this solicitation, each Bidder certifies that it is not currently debarred by the federal government, the Commonwealth of Virginia, or any agency or department thereof from submitting a Bid or proposal in connection with any procurement project and that it is not an agent of any person or entity that currently is so debarred.

### 1.23 Duration of Bids

Bids shall be valid for a minimum of 90 days following the deadline for submitting Bids. If an Award is not made during that period, all Bids shall be automatically extended for another 90 days. Bids will be automatically renewed until such time as either an Award is made, or proper notice is given to FW of Bidder's intent to withdraw its Bid according to Code of Virginia § 2.2-4330.

### 1.24 Incorporation by Reference

This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which is incorporated into and made part of the solicitation. By submitting a Bid in response to this solicitation, all Bidders acknowledge the VPPA and agree to be bound by it. A copy

of the VPPA is available for inspection at the Procurement Department at FW. It is also available at the Virginia Department of General Services, Department of Purchases and Supply Website:

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

### **1.25 Negotiation With Low Bidder**

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

### **1.26 Unit Prices Prevail**

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

### **1.27 Documentation to be Submitted with Bid**

The following documentation shall be submitted with the Bid:

- A. Fully completed Attachment 1 Bid Submission Form.
- B. Fully completed Attachment 2 References. References shall be from customers of similar size and scope of operations as FW, to whom the Bidder has supplied the same services within the past 5 years. References shall be able to attest without reservation to the fact that the Bidder provided the contracted goods/services without a significant problem of any kind, and at any time during the contract period. When considered collectively, the project references shall demonstrate experience which aligns with the Scope of Work and include the following:
  - 1. Providing cathodic protection testing and inspection services.
  - 2. Adjusting cathodic protection systems for optimum corrosion control.
  - 3. Performing repairs and maintenance of equipment.
  - 4. Submission of written reports.

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- C. Fully completed Attachment 3 Pricing Schedule, printed from the Excel file.
- D. A copy of all resumes and certifications held by Bidder employees allocated to the Work by the Bidder. All Cathodic protections inspections and repairs of cathodic protection systems for water tanks shall be performed by or under the direct supervision of an Association for Materials Protection and Performance (AMPP) certified Cathodic Protection Specialist (CP4) who has a minimum of 5 years of field experience in the inspection, installation, and repairs of cathodic protection systems for water tanks. All field technicians shall have National Association of Corrosion Engineers (NACE) certification of Cathodic Protection Specialist (CP2) or higher and have a minimum of 5 years of field experience in the inspection, installation, and repairs of cathodic protection systems for water tanks; or, shall have a bachelor's degree in Electrical Engineering or Chemical Engineering, extensive training in cathodic protection principles, and a minimum of 5 years of experience in the inspection, installation, and repairs of cathodic protection systems for water tanks.
- E. A copy of the Bidder's written safety program that complies with all applicable Occupational Safety and Health Administration (OSHA) and Virginia Occupational Safety and Health Administration (VOSH) standards for General Industry regulations and a written Permit Required Confined Space Entry Program that complies with the then current VOSH Standard Confined Space Entry Standard with Bidder's general safety program shall be submitted with the Bid.

**END OF SECTION 1**

**SECTION 2**

**2 SPECIFICATIONS & SCOPE OF WORK**

**2.1 General Requirements**

- A. FW owns and operates 28 above grade water storage tanks, 19 of which are equipped with cathodic protection systems. The purpose of this Contract is to ensure that cathodic protection systems on the 19 tanks are maintained and in good working order so as to prolong the life of these valuable assets. The scope of work includes annual inspection of the 19 tanks that do have cathodic protection and repair of existing systems.
  
- B. The Contractor shall perform inspection, maintenance and repair services on the FW water storage tanks listed below. Full description and location of sites to be serviced will be provided to the successful Bidder upon Contract Award, which includes a Security License and Non-Disclosure Agreement.

**Table 1: FW Water Storage Tanks by Facility ID, Elevation, and Dimensions**

Facility ID	Ground or Elevated Tank	Tank Volume (MG)	Diameter (FT)
350757	Ground	2.08	96
350758	Ground	2.04	96
350747	Elevated / Gravity	0.75	76
350764	Ground & Pumped	5.01	146
350765	Ground & Pumped	5.01	146
350382	Ground / Pumped	2.56	104
350383	Ground / Pumped	2.56	104
350384	Ground / Pumped	2.46	104
350817	Elevated / Gravity	1.00	81
475040	Ground	3.97	80
350814	Ground / Pumped	3.47	100
350843	Ground	1.00	60
350844	Ground	1.02	60
350845	Ground	2.38	90
350866	Ground	2.25	78
350868	Elevated / Gravity	2.00	108
431041	Ground	5.46	130
475035	Elevated / Gravity	2.20	99
475042	Elevated / Gravity	2.50	109

**2.2 Scope of Work**

Contractor shall be responsible for providing the following services for water storage tanks listed in Section 2.1 – General Requirements, Table 1:

- A. Annual inspection, testing and cleaning of all impressed current cathodic protection systems, including controls, meters, contacts, and connections, to ensure that each system is operating properly and consistent with the design intent. This Work shall be conducted on an annual basis at a mutually agreed upon time. The Contractor shall coordinate at least 14 calendar days in advance to determine a date and time for the inspection that is mutually agreeable to both parties, weather permitting. The ‘annual inspection year’ will be defined as the first

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inspection that occurs in either the spring or the fall. The subsequent annual inspections shall occur in the same season period as the first year.

1. The Contractor shall provide a price per tank per year for annual inspection. This rate shall apply to any additional tanks of similar design FW may request.
- B. Replacement of fuses as required.
- C. Adjustment of the system for optimum corrosion control on submerged metal surface of tank.
- D. The Contractor shall provide an estimate based on time and materials for each tank requiring corrective maintenance of the cathodic protection equipment to ensure that the cathodic protection systems are in good operating condition by furnishing all labor and materials required to repair or replace all worn or damaged parts of the cathodic system within 90 business days of date of inspection and within 30 days of receipt of FW Purchase Order.
- E. If FW reads the rectifier parameters and notices a parameter is out of range, FW will contact the Contractor in writing to discuss. The Contractor shall be available within seven days of the FW written initial contact to discuss the reading at no cost to FW. If FW requires the Contractor to reinspect a tank's cathodic protection system, the Contractor shall be onsite within 30 calendar days of the FW Purchase Order at an agreed upon time. The Contractor shall provide a price per tank for any inspections requested outside of the annual inspection.
- F. FW will be responsible for draining, cleaning and disinfecting, and recharging any tanks taken offline. FW will provide the Contractor access for the Work.
- G. All Work shall be initiated and completed on normal business workdays between the hours of 7am and 3pm, unless otherwise approved by Fairfax Water.

### 2.3 Safety

- A. The Contractor will perform all work in a manner that minimizes road hazards for the motoring public. Contractor shall take all reasonable precautions to protect public and private property, such as sidewalks, pavement, lawns, fences, bushes, trees, shrubs, buildings, and other property from undue damage.
- B. The Contractor shall be responsible for their own safety equipment.

### 2.4 Inspection

The Contractor shall be subject to periodic Work inspections by FW. FW will verify that Work has been completed sufficient to the standards of the scope of work before payment is made.

### 2.5 Reporting

Submission of a written report with all testing results, recommendations, and quotes for maintenance work shall be made within 60 business days of inspection. At a minimum the report shall include the following information for each tank:

- A. Provide manufacturer of the cathodic protection system.

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- B. Summary of a visual inspection of the tank for the presence of corrosion (outside of tank and what can see from the top hatch).
- C. Cathodic protection system and component status (good, fair or poor) to include but not limited to submerged anodes, rectifier, and rectifier cabinet.
- D. The rectifier readings before and after system adjustment to include but not limited to amperage, voltage, and reference cell potential, and the range of acceptable readings for each reference cell potential.
- E. The acceptable range of the reference cell voltage at each tank site.
- F. A description of what cathodic protection system adjustments were made.
- G. Confirmation of system performance and that potential profile readings indicate protection of submerged surfaces. If not, the report shall include a description of any recommended repairs, why the repairs are needed, and potential cause of the component failure.

### 2.6 Estimated Quantities

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

**END OF SECTION 2**

SECTION 3

**3. STANDARD TERMS AND CONDITIONS**

**3.1 Drug-Free Workplace**

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

**3.2 Non-Discrimination by Contractor**

Contractor covenants and agrees as follows:

- A. During the Term, Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.
- C. Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this Section.

Contractor will include the provisions of the foregoing Sections 3.2(A), (B), and (C) in every subcontract, subconsulting agreement, and purchase order over \$10,000, in order that the provisions above will be binding upon each subcontractor, subconsultant, and vendor.

**3.3 Non-Discrimination by FW**

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

**3.4 No Employment of Unauthorized Aliens**

Contractor hereby covenants and agrees that it does not, and shall not during the term of this Contract, knowingly employ an unauthorized alien (as such term is defined in the federal Immigration Reform and Control Act of 1986).

**3.5 Right of Audit**

Contractor covenants and agrees to retain all books, records, and other documents (electronic or otherwise) relating this Contract (the “Project Records”) for at least five (5) years after final payment hereunder. Project Records will be deemed to exclude books, records, and other documents if and

to the extent they are protected by the attorney-client privilege. FW and its authorized agents (the "Auditing Parties") shall have full access to and the right to examine the Project Records upon written request at any time, and from time to time, during the term of this Contract and for a period of five (5) years thereafter. Contractor hereby covenants and agrees that, within 10 days after it receives written notice from an Auditing Party, it will make the Project Records available for inspection and copying by such Auding Party during Contractor regular business hours, with copies being provided at a reasonable cost payable by the Auditing Party. Any failure on the part of Contractor to comply with the provisions of this Section will constitute a breach of the Contract and, regardless of whether such failure occurs during the term of the Contract, or within the five-year period commencing on the date of final payment hereunder, will constitute sufficient grounds for debarment Contractor. Contractor hereby agrees that it will pay and be responsible for all costs and expenses (including court costs and attorneys' fees) incurred by an Auditing Party in enforcing this provision.

### **3.6 Dispute Resolution Process**

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

- A. Be delivered to the attention of FW's Procurement Manager, at the address shown in the Notice provisions of the Contract, not later than five days after the occurrence or of the beginning of the Work upon which the claim is based; and
- B. Contain a reasonably detailed description of the basis of the claim.

Contractor failure to comply with the foregoing requirements will result in a waiver of the claim. FW will make a written decision upon any such claim within 60 days after submittal of the claim. Contractor will not institute legal action prior to receipt of FW's decision on the claim unless FW fails to render such decision within 90 days after submittal of the claim. The decision of FW will be final, unless Contractor initiates legal action as provided in § 2.2-4364 of the Virginia Code. Failure of FW to render a decision within 90 days will not result in Contractor being awarded the relief claimed, nor will it result in any other relief or penalty. The sole result of FW's failure to render a decision within the time allotted will be Contractor right to immediately institute legal action. No administrative appeals procedure pursuant to § 2.2-4365 of the Virginia Code has been established for contractual claims under this Contract.

### **3.7 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.

### **3.8 Arrearage**

During the term of the Contract, the Contractor shall not be in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any public body in the Commonwealth of Virginia, including but not limited to any obligation to pay taxes and/or employee benefits.

### **3.9 Compliance with Laws, Regulations and Codes**

The Contractor hereby represents and warrants that:

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- 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.

### 3.10 Contract Changes / Change Orders

- A. No verbal agreement or conversation with any officer, agent, or employee of FW either before or after the execution of any Contract resulting from this solicitation or following negotiations, shall affect or modify any of the terms, conditions, Specifications, or obligations contained in the solicitation, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the Procurement Contact identified on the cover page. Contract changes shall be in writing and shall be on official FW Procurement Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Project Officer.
- B. Changes can be made to the Contract in any of the following ways:
  - 1. The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
  - 2. FW may order changes within the general scope of the Contract at any time by Notice to the Contractor. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the Notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor records and/or to determine the correct number of units independently; or
    - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or

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savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Procurement Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the Contract generally.

### 3.11 Contractor Responsibilities

- A. The Contractor shall be responsible for all products and/or services as required by this IFB. The use of subcontractors is prohibited unless:
  - 1. A request to include a subcontractor is included in the Bid; and,
  - 2. The Bidder receives written approval to use a subcontractor prior to, or as part of the formal contract between the parties; or,
  - 3. The Contractor receives approval to use a subcontractor if FW at its sole discretion determines subcontractor approval would expedite the fulfillment of the products/services as required by this IFB.
- B. Even when properly authorized by FW, the use of a subcontractor does not relieve the Contractor of liability under the Contract. subcontractors will be approved only when both the Contractor and the subcontractor meet the qualifications to provide quality control and assurance of the subcontracted work.
- C. The Contractor, at its sole expense, shall be responsible for damage to FW and non -FW property as a result of its failure, or its subcontractor failure to protect such facilities and utilities.
- D. The Contractor, at its sole expense, shall immediately repair or replace FW property damaged by (or caused by) the Contractor or its subcontractor(s). Replacements will be of equal or better quality than the property damaged property, and all such work must be approved by FW Project Officer.

### 3.12 Delivery

In the case of solicitations that require delivery to FW:

- A. By submitting a Bid in response to this solicitation, the Bidder guarantees delivery of Contract items within the timeframe specified herein or as indicated in the Bidders Bid submission form. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of Contract and may be grounds for a declaration of default in addition to any other remedies FW may be entitled to.
- B. Deliveries must be made by within the delivery time specified in the Bid submission document. If a delay is anticipated, the Contractor must provide as much advanced Notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.
- C. National Terrorism Advisory System: If the National Terrorism Advisory System places the water / wastewater industry on an Elevated Alert or Imminent Alert, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor yard, the Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be

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required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor risk and expense. FW may add additional screening requirements if an Elevated Alert or Imminent Alert is in place

### 3.13 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.

### 3.14 Examination of Records

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

### 3.15 Formation of Contract

A. The words "Contract" and "Purchase Order" are used interchangeably unless the context otherwise plainly requires. The documents comprising the Contract shall be accorded the following order of precedence:

1. Any Change Orders or Amendments;
2. All Purchase Orders;
3. Any Addenda to the IFB;
4. This IFB (including all Appendices and Attachments hereto); and
5. The Bidder's completed Bid Tabulation Form (including any drawings and submittals).

B. The Contract to be entered into as a result of this IFB shall be by and between the Bidder as Contractor and FW. It shall include the following items, which are listed in order of precedence:

1. The fully executed Contract between the parties, or FW Purchase Order,
2. The IFB and any Addenda to the IFB,
3. The Bidder's response to the IFB (including any drawings and submittals), and
4. All correspondence between the parties regarding this IFB.

C. Anything called for by one of the Contract documents and not called for by the others shall be of like effect as if required or called for by all, except that a provision clearly designed to negate or alter a provision contained in one or more of the other Contract documents shall have the intended effect.

### **3.16 Indemnification and Responsibility for Claims and Liability**

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

### **3.17 No Waiver or Estoppel**

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

### **3.18 Pass-through Price Increases and Decreases**

For annually renewable Contracts:

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

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- B. Decreases:
1. Pass through price increases shall cease at the end of the then current Contract year and Contract pricing will return to the pre-pass-through rate. The Contractor will be eligible for and only upon request, the annual economic price increase as defined in subsection 3.18 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.

### 3.19 Payment Clauses Required in All Contracts

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

- A. That any Contract Awarded by FW include the following clauses:
1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the Contractor by FW for work performed by any subcontractor(s) under the Contract:
    - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
    - b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor payment with the reason for nonpayment.
  2. Bidders shall include in their offer submissions either: (i) if an individual Contractor, their social security numbers; and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.
  3. The Contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the Contract, except for amounts withheld as allowed in subdivision one.
  4. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent per month.
- B. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- C. A Contractor obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A Contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

### 3.20 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

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FEIN. Invoices are not to be sent to the Contract Project Officer, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.

- B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- C. Invoices: The Contractor shall submit invoices for items ordered, delivered, and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or Contract number and are subject to review and approval by FW Project Officer.
- D. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price 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.

### 3.21 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.

### 3.22 Price Firm Period

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

### 3.23 Price and Title

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

### 3.24 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

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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.

### 3.25 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.

### 3.26 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.

### 3.27 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.

### 3.28 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

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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 by conveyance of the manufacturer's ten (10) year warranty, following date of final acceptance. Should any defect be noted by the FW, the Project Officer will notify the Contractor of such defect or non-conformance. Notification will state either (1) that the Contractor shall replace or correct, or (2) FW does not require replacement or correction, but an equitable adjustment to the Contract price will be negotiated. If the Contractor is required to correct or replace, it shall be at no cost to FW and shall be subject to all provisions of this clause to the same extent as materials initially delivered. If the Contractor fails or refuses to replace or correct the deficiency, the office issuing the purchase order may have the materials corrected or replaced with similar items and charge the Contractor the costs occasioned thereby or obtain an equitable adjustment in the Contract price.
- C. Work not conforming to these warranties shall be considered defective.
- D. This warranty of materials and workmanship is separate and independent from and in addition to any of the Contractor other guarantees or obligations in this Contract.
- 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.

### 3.29 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.

### 3.30 Insurance

- A. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.
- B. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor obligations under the Contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor performance under this Contract.
- C. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract.
- D. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from

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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

E. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least \$500,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor use of motor vehicles or other equipment and must cover both on-site and off-site operations.

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

**3.31 Contractor's Compliance and Safety Program**

A. The Contractor shall comply with all applicable Federal, State, and local safety programs, regulations, standards, and codes, to include though not limited to:

1. The Virginia Uniform Statewide Building Code,
2. Building Officials & Code Administrators (BOCA) codes (together with adopted International Codes),
3. Virginia Department of Health (VDH) regulations,
4. Virginia Department of Environmental Quality (DEQ) regulations,
5. Virginia-OSH (VOSH) regulations, and
6. National Electric Code (NEC).

B. The Contractor shall have a written safety program that complies with all applicable OSHA and VOSH standards for General Industry regulations and a written Permit Required Confined Space Entry Program that complies with the then current VOSH Standard Confined Space Entry Standard. A copy of these programs shall be provided to FW with the Bid.

- C. When working in a confined space, the Contractor shall utilize only personnel trained for confined space entry and shall provide all entry equipment including atmospheric test equipment.
- D. Hard Hat Area: Contractor's employees shall wear hard hats while working outdoors at the work site.

**3.32 Priority Customer**

By submitting a Bid in response to this solicitation, Bidder 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.

**3.33 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 breach of Contract for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the breach by obtaining the services of a qualified Contractor to complete the project and charge any additional or increased costs to the Contractor.

**3.34 Force Majeure**

If a delivery is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subcontractors or supplier(s), a reasonable extension of time as FW deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor FW may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one or more of the Commodities elsewhere for a time, or (iii) terminate the Contract; all without liability to Contractor on the part of FW, as the case may be. Contractor request and justification shall be subject to such substantiation and further inquiries as FW may require.

**3.35 Delays**

By the Contractor: After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by any means available to FW, including (but not limited to) liquidated damages and to recover any additional costs, lost funds and/or related expenses. This is not a limitation of FW's legal rights to recover damages due to Contractor default in any other way.

By FW: The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the actions or inactions of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension to the delivery 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.

**END OF SECTION 3**

**ATTACHMENT 1  
BID SUBMISSION FORM**

THE UNDERSIGNED UNDERSTANDS AND ACKNOWLEDGES THE FOLLOWING:

THE OFFICIAL, TRUE, AND COMPLETE COPY OF THE SOLICITATION DOCUMENTS, WHICH SHALL INCLUDE ANY ADDENDUMS THERETO, IS THE ELECTRONIC COPY OF THE SOLICITATION DOCUMENTS AVAILABLE FROM FW'S WEBSITE AT:

<https://www.fairfaxwater.org/contracts> .

POTENTIAL BIDDERS ARE RESPONSIBLE FOR DETERMINING THE ACCURACY AND COMPLETENESS OF ALL SOLICITATION DOCUMENTS THEY RECEIVE, INCLUDING DOCUMENTS OBTAINED FROM FW, AND DOCUMENTS OBTAINED FROM ALL OTHER SOURCES.

INDICATE THE NAME AND CONTACT INFORMATION OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS BID (AUTHORIZED AGENT).

NAME (PRINTED): \_\_\_\_\_ TITLE: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_ TEL. NO.: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

**TRADE SECRETS OR PROPRIETARY INFORMATION:**

Trade secrets or proprietary information submitted by a Bidder in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, §2.2-4342. Public inspection of certain records, F., of the Virginia Public Procurement Act states that the Bidder, Offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

Please mark one:

- ( ) No, the Bid I have submitted does not contain any trade secrets and/or proprietary information.
- ( ) Yes, the Bid I have submitted does contain trade secrets and/or proprietary information.

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If Yes, you must clearly identify below the exact data or other materials to be protected and list all applicable page numbers of the Bid containing such data or materials:

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State the specific reason(s) why protection is necessary:

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If you fail to identify the data or other materials to be protected and state the reasons why protection is necessary in the space provided above, you will not have invoked the protection of §2.2-4342. Public inspection of certain records, F., of the of the Code of Virginia. Accordingly, effective upon the award of Contract, the Bid will be open for public inspection consistent with applicable law.

**CERTIFICATION OF NON-COLLUSION:**

The undersigned certifies that this Bid is not the result of, or affected by, any act of collusion with another person (as defined in Code of Virginia Section 59.1-68.6 et seq.), engaged in the same line of business or commerce; or any act of fraud punishable under the Virginia Governmental Frauds Act (Code of Virginia §18.2-498.1 et seq.).

**THE PROPER FULL LEGAL NAME OF THE FIRM OR ENTITY SUBMITTING THIS BID MUST BE WRITTEN IN THE SPACE PROVIDED BELOW. THIS BID FORM, AND ALL OTHER DOCUMENTS REQUIRED BY THE SOLICITATION TO BE SUBMITTED WITH THIS BID FORM, INCLUDING, BUT NOT LIMITED TO ALL ISSUED ADDENDUMS, MUST**

**BID SUBMISSION FORM, PAGE 2 OF 5**

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BE FULLY AND ACCURATELY COMPLETED AND SIGNED BELOW BY A PERSON AUTHORIZED TO LEGALLY AND CONTRACTUALLY BIND THE BIDDER, OR THE BID MAY BE REJECTED:

**AUTHORIZED SIGNATURE** \_\_\_\_\_

**PRINT NAME AND TITLE** \_\_\_\_\_

SUBMITTED BY: (LEGAL NAME OF ENTITY)					
ADDRESS:					
CITY/STATE/ZIP:					
TELEPHONE NO:			FACSIMILE NO.:		
THIS FIRM IS A: • INSERT NAME OF STATE _____ ___ CORPORATION, ___ GENERAL PARTNERSHIP, ___ LIMITED PARTNERSHIP, ___ UNINCORPORATED ASSOCIATION, ___ LIMITED LIABILITY COMPANY, ___ SOLE PROPRIETORSHIP					
IS FIRM AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VA?					
IDENTIFICATION NO. ISSUED TO THE FIRM BY THE SCC:					
ANY BIDDER EXEMPT FROM SCC AUTHORIZATION REQUIREMENT SHALL INCLUDE A STATEMENT WITH ITS BID WHY THEY ARE NOT REQUIRED TO BE SO AUTHORIZED					
IS YOUR FIRM OR ANY OF ITS PRINCIPALS CURRENTLY DEBARRED FROM SUBMITTING PROPOSALS OR BIDS TO FW, OR ANY OTHER STATE OR POLITICAL SUBDIVISION IN THE COMMONWEALTH OF VIRGINIA?					
BIDDER STATUS:	MINORITY OWNED:		WOMAN OWNED:		NEITHER:



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**The Following Documents are Attached to and Made Part of this Bid:**

1. Fully completed Attachment 1 Bid Submission Form.
2. Fully completed Attachment 2 References.
3. Fully completed Attachment 3 Pricing Schedule, printed from the Excel file.
4. A copy of all resumes and certifications held by Bidder employees allocated to the Work by the Bidder. All Cathodic protections inspections and repairs of cathodic protection systems for water tanks shall be performed by or under the direct supervision of a Association for Materials Protection and Performance (AMPP) certified Cathodic Protection Specialist (CP4) who has a minimum of 5 years of field experience in the inspection, installation, and repairs of cathodic protection systems for water tanks. All field technicians shall have National Association of Corrosion Engineers (NACE) certification of Cathodic Protection Specialist (CP2) or higher and have a minimum of 5 years of field experience in the inspection, installation, and repairs of cathodic protection systems for water tanks, or a person with a bachelor's degree in Electrical or Chemical Engineering who has also received extensive training in cathodic protection principles and has a minimum of 5 years of experience in the inspection, installation, and repairs of cathodic protection systems for water tanks.
5. A copy of the Bidder's written safety program that complies with all applicable Occupational Safety and Health Administration (OSHA) and Virginia Occupational Safety and Health Administration (VOSH) standards for General Industry regulations and a written Permit Required Confined Space Entry Program that complies with the then current VOSH Standard Confined Space Entry Standard with Bidder's general safety program shall be submitted with the Bid.
6. Fully completed Attachment 5 Document Security License and Non-Disclosure Agreement.

If awarded the Contract, I will comply with the requirements of this solicitation and any resulting Contract.

BIDDER NAME: \_\_\_\_\_

AUTH. SIGNATURE: \_\_\_\_\_

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**ATTACHMENT 2  
REFERENCES**

BIDDER'S NAME: \_\_\_\_\_

Instructions: Bidder must submit three (3) references which shall be from customers of similar size and scope of operations as FW, to whom the Bidder has supplied the same services within the past 5 years. References shall be able to attest without reservation to the fact that the Bidder provided the contracted goods/services without a significant problem of any kind, and at any time during the contract period.

1. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

E-MAIL: \_\_\_\_\_

NAME AND COMPLETION DATE OF PROJECT(S): \_\_\_\_\_  
\_\_\_\_\_

2. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

E-MAIL: \_\_\_\_\_

NAME AND COMPLETION DATE OF PROJECT(S): \_\_\_\_\_  
\_\_\_\_\_

3. COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE: (\_\_\_\_\_) - \_\_\_\_\_ - \_\_\_\_\_

E-MAIL: \_\_\_\_\_

NAME AND COMPLETION DATE OF PROJECT(S): \_\_\_\_\_  
\_\_\_\_\_

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**ATTACHMENT 3  
PRICING SCHEDULE**

**THIS PAGE IS LEFT INTENTIONALLY BLANK**

**THE APPARENT LOW BIDDER SHALL SUBMIT ATTACHMENT 3 PRICING SCHEDULE  
EXCEL FILE, WITHIN 5 CALENDAR DAYS OF FW REQUEST**

BLANK PRICING SCHEDULE PAGE, PAGE 1 OF 1

ATTACHMENT 4  
AGREEMENT



FAIRFAX COUNTY WATER AUTHORITY  
8570 Executive Park Avenue, Fairfax, Virginia 22031-2218  
[www.fairfaxwater.org](http://www.fairfaxwater.org)

**Agreement**

**Contract Title: Water Storage Tank Cathodic Protection System Inspection, Maintenance, and Repair**

This Contract 2024-111 is made and entered into this \_\_\_ day of \_\_\_\_\_ 2024, the date the Agreement is fully executed by Fairfax County Water Authority, a political subdivision of the Commonwealth of Virginia, operating as Fairfax Water (“FW”), by and between FW and \_\_\_\_\_ (“Contractor”), whose address is: \_\_\_\_\_.

In consideration of the mutual stipulations, agreements and covenants contained herein, the parties hereby agree as follows:

**1. Scope of Work:**

The Scope of Work for this Contract generally is described as to provide water storage tank cathodic protection system inspection, maintenance, and repair (“the Work”), as set forth in greater detail in Attachment A, Specifications & Scope of Work.

**2. Contract Price:**

The Contract Price shall be as set forth in Attachment B, Pricing Schedule.

FW will not compensate the Contractor for any Work beyond that included in Attachment B unless the additional Work is covered by a written Amendment to this Contract.

The Contract Prices set forth in Attachment B include all costs, expenses, including reimbursable expenses, to provide the Work described in this Contract.

**3. Contract Documents:**

The documents which form the entire Contract between FW and the Contractor (“Contract Documents”) are as defined either in this Contract or in the Invitation for Bid, and are as set forth below.

3.1. In the case of a conflict, the order of precedence shall be as follows:

- 3.1.1. Agreement and all modifications properly incorporated in the Agreement
- 3.1.2. Attachment A – Specifications & Scope of Work
- 3.1.3. Attachment B – Pricing Schedule
- 3.1.4. Attachment C – Standard Terms and Conditions

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- 3.1.5. Attachment D – Certificate(s) of Insurance
- 3.1.6. Attachment E Document Security License And Non-Disclosure Agreement
- 3.1.7. IFB/Associated Documents

- 3.2. All provisions required by law to be included in this Contract or otherwise applicable to this Contract shall be deemed to be a part of this Contract, whether actually set forth herein or not.
- 3.3. The Contract Documents are complementary and what is called for by one is as binding as if called for by all. If the Contractor finds a conflict, error, ambiguity or discrepancy in the Contract Documents, it shall immediately, in writing call such conflict, error, ambiguity or discrepancy to the attention of the Owner before proceeding with the Work affected thereby. The Owner will promptly resolve the matter in writing. Work done by the Contractor after such conflicts, errors, ambiguities or discrepancies are discovered, or in the exercise of reasonable care reasonably should have been discovered, prior to written resolution thereof by the Owner shall be done at the Contractor's expense and risk. Any Work that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be supplied whether or not it is specifically called for. Work, materials or equipment described in words which so applied have a well-known technical or trade meaning shall be deemed to refer to such recognized standards.
- 3.4. The Contractor will be held to a standard of strict compliance with the requirements of the Contract Documents in the performance of the Work, for giving Notice of any type to the Owner, and for making any submittal required for any purpose. The Contractor acknowledges and agrees that all time requirements set forth in the Contract Documents for any purpose are of the essence.

#### 4. **Definitions:**

All words and terms shall have the meanings and terms assigned to them in the Contract Documents, unless a different meaning is clear from the context.

#### 5. **Contract Term:**

- 5.1. The initial term of the Contract shall commence on the date the Contract is fully executed by FW and expiring on the last day of the 12th month following execution of the Contract by FW (Initial Contract Term), unless otherwise stated as provided in the Contract Documents.
- 5.2. This Contract may be renewed for a term not to exceed one (1) year ('Renewal Contract Term') by written Notice given by FW at any time prior to 30 calendar days after expiration of the preceding Initial Contract Term or Renewal Contract Term. No representative of FW has any authority to order, direct, or request work after expiration of the Initial Contract Term or Renewal Contract Term and prior to a Renewal Contract Term in strict compliance with the renewal terms herein. FW, at its sole discretion, has the right, but is under no obligation, to exercise this right to renewal not to exceed four (4) additional one-year periods at the same terms and conditions. If funding is not available to complete orders during the Initial Contract Term and the four Renewal

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Contract Terms, FW reserves the right to renew the Contract until all orders have been received.

### 6. **Contract Price Adjustment:**

- 6.1. The Contractor agrees that prices shall remain firm for the Initial Contract Term. If consideration is to be given to adjusting the price after the Initial Contract Term or a Renewal Contract Term, the price may be adjusted only upon approval of a written request to the Procurement Manager. Upon receipt of the Contractor's request, FW shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor. Any price adjustment agreed to shall take place only in accordance with the schedule defined above.
- 6.2. Any annual increase in prices or rates shall be limited to the most recently published Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Arlington-Alexandria (unadjusted for seasonal changes) for the 12-month period ending 90 calendar days prior to the end of the then current contract year. The CPI-U for Washington-Arlington-Alexandria (unadjusted for seasonal changes) is the default index for the term of the Contract.
- 6.3. Any request for Contract price increases must be submitted at least 60 calendar days prior to the end of the then current term of Contract.
- 6.4. Issuance of a written renewal document and/or Purchase Order for the Renewal Contract Term(s) 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 Renewal Contract Term providing that FW has not formally canceled the Contract.
- 6.5. Negative BLS index: If the agreed upon index is a negative number the Contractor shall reduce Contract rates by the same amount for the Renewal Contract Term.

### 7. **Non-Appropriation:**

All funds for payments by FW under any Contract awarded are subject to the availability of an annual appropriation for this purpose by FW. In the event of non-appropriation of funds by the FW for the Work provided under the Contract, FW will terminate the Contract, without termination charge or other liability to FW, on the last day of the then current fiscal year or when the appropriation made for the then current year for the Work covered by this Contract is spent, whichever event occurs first. FW will endeavor to provide reasonable Notice of such termination, but no formal notice of such termination is required of FW, and FW shall not order any Work to be provided after such termination date.

### 8. **Right to Terminate Contract:**

FW has the right to terminate this Contract for convenience at any time, or for default, all pursuant to the provisions of the Standard Terms and Conditions.

### 9. **Direction to Proceed:**

- 9.1. For Work to be performed by Contractor under this Contract, the Procurement Department will issue a Purchase Order. The Purchase Order will define the location of the Work to be performed and will define or, where specific definition cannot be

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provided, will estimate, the scope of the Work to be performed, the dates within which that Work is to be performed, and the price for that Work (collectively "Purchase Order Work"). Contractor shall not commence any Work until a written Purchase Order has been issued by the Procurement Department, and if it does so FW will be under no obligation to make payment for any Work performed prior to the issuance of the required Purchase Order. No employee or agent of FW other than the Procurement Department, or properly authorized designee, has authority to make any purchases or otherwise bind FW contractually. If a Purchase Order is issued by anyone other than the Procurement Department, it shall be the responsibility of the Contractor to confirm the authority of that person to bind FW. Provided, however, if the Contractor has received from the Procurement Manager prior written confirmation of a person's authority to bind FW, the Contractor may rely upon all Purchase Orders issued by that person within the scope of the stated authority as authorized.

- 9.2. Notwithstanding the foregoing, if the circumstances are such that there is not sufficient time for issuance of a Purchase Order, FW through the Procurement Manager, or authorized designee, may direct the Contractor to proceed by less formal writing or electronic communication, to be replaced by a Purchase Order by 5:00 P.M. on the next regular FW working day following issuance of such FW directive. Further, if emergency conditions exist which necessitate that the Contractor act to avoid or mitigate damage to person or property, the Contractor shall proceed and give written Notice to FW such emergency Work by 5:00 P.M. on the next regular FW working day following commencement of such emergency Work.

**10. Estimated Quantities: No Guaranteed Minimum:**

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

**11. Payment Procedures:**

Contractor shall submit invoices for its Work, and such invoices will be processed by FW, all in accordance with the provisions of the Standard Terms and Conditions.

**12. Assignment of Interest:**

The Contractor shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.

**13. Notices:**

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

To the Contractor:

To FW:

**14. Governing Law; Venue, Waiver of Jury Trial:**

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

**15. Binding Agreement:**

FW and the Contractor each binds itself, its successors and assigns to the other, its successors and assigns, in respect of all covenants, terms, conditions and obligations contained in each of the Contract Documents.

**Signatures Appears on Following Page**

**IFB 24-266**

**Fairfax County Water Authority**  
**8570 Executive Park Avenue**  
**Fairfax, Virginia 22031**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Procurement Contact:*

*Contractor Contact:*

\_\_\_\_\_  
Phone: 703-289-\_\_\_\_\_  
Email: [@fairfaxwater.org](mailto:@fairfaxwater.org)

\_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Jamie Bain Hedges, P.E.  
Title: General Manager  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attachments:**

- Attachment A Specifications & Scope of Work
- Attachment B Pricing Schedule
- Attachment C Standard Terms and Conditions
- Attachment D Certificate(s) of Insurance
- Attachment E Document Security License And Non-Disclosure Agreement

**END OF ATTACHMENT 4 – AGREEMENT**

ATTACHMENT 5  
DOCUMENT SECURITY LICENSE AND NON-DISCLOSURE AGREEMENT

THIS LICENSE AND NONDISCLOSURE AGREEMENT, made on this \_\_\_\_\_ (the “Effective Date”), by and between the Fairfax County Water Authority, 8570 Executive Park Avenue, Fairfax, VA 22031, and hereinafter called "Fairfax Water," and \_\_\_\_\_

Applicant Name and Address

and hereinafter called "Licensee," recites and provides as follows:

Recitals

Fairfax Water owns and holds proprietary rights to the Confidential Information (as defined below). Fairfax Water wishes to grant the Licensee a non-transferrable, non-exclusive, limited and revocable license to use the Confidential Information in connection with Licensee’s performance of the Services (as defined below), and Licensee wishes to accept such a license, all on the terms and in accordance with the conditions set forth in this Agreement.

Agreement

**NOW THEREFORE**, in consideration of the covenants and agreements contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the parties hereto agree as follows:

**Section 1 - Definitions:**

**“Confidential Information”** means and includes all documents, drawings, specifications, field data, electronic and other materials and records (regardless of form or format) provided by Fairfax Water to the Licensee in connection with the Licensee’s performance of the Services including, but not limited to data, files, emails, shapefiles, databases (geospatial and non-geospatial), spreadsheets, tabular lists, and metadata. Certain items of Confidential Information are identified on IFB 24-266 – Attachment List to this Agreement.

**“Services”** means the services provided by a prime and/or subcontractor related work Merrifield Campus Analysis that is the subject of Fairfax Water’s IFB 24-266.

**Section 2 – Grant of License:**

Subject to the terms and conditions set forth in this Agreement, Fairfax Water hereby grants to the Licensee, and the Licensee hereby accepts, a non-transferable, non-exclusive, limited and revocable license to use the Confidential Information during the Term (as defined in Section 7 below) for the sole purpose of performing the Services. The Licensee shall not assign, sell, sublease, transfer or otherwise convey this Agreement, the license granted hereunder, or any other right or obligation hereunder, unless authorized in advance and in writing by Fairfax Water to do so.

**Section 3 – Confidentiality and Restrictions on Use:**

- A. The Licensee hereby covenants and agrees that, except as otherwise expressly permitted herein:
  - (a) the Licensee will only use the Confidential Information for performance of the Services and not for its own benefit or for any other purpose; (b), Confidential Information will maintained by the Licensee as confidential and only be disclosed on a “need-to-know” basis to individuals who have been apprised of the confidential nature of the information, who are employees, consultants,

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or subcontractors of the Licensee, and who are bound to the Licensee by obligations of confidentiality that are no less restrictive than those contained herein (such individuals, employees, consultants, and/or subcontractors to be sometimes collectively referred to herein as the “Authorized Representatives”), (c) the Licensee will handle and protect the Confidential Information using the same internal security procedures and degree of care regarding confidentiality as similar information belonging to the Licensee (but not less than reasonable care); (d) the Licensee will not disclose, publish, or provide access to the Confidential Information to any person, firm, corporation, or other organization without the prior written consent of Fairfax Water.

### **Section 4 – Ownership and Rights to Use Confidential Information:**

- A. The Confidential Information, and all intellectual property rights embodied in such Confidential Information, will remain the property of Fairfax Water. This Agreement and the disclosure of the Confidential Information to the Licensee hereunder (a) creates only a limited and revocable license to use such information solely for the performance of the Services by the Licensee; (b) will not be construed as granting or conferring any express or implied right, license, or authority in or to Fairfax Water’s other proprietary information, except the limited right to use Confidential Information as authorized by this Agreement; and (c) will not grant or create any express or implied right, license, conveyance, or authority in or to any of Fairfax Water’s patents, copyrights, trademarks, trade secrets, or other intellectual property rights.
- B. Notwithstanding any provision hereof to the contrary, the Licensee may disclose Confidential Information if and to the extent required of it by applicable judicial or other governmental order, provided that the Licensee first provides reasonable notice to Fairfax Water prior to such disclosure and the Licensee complies with any applicable protective order or equivalent.
- C. The Licensee will require its employees, consultants, and subcontractors to sign a copy of the Fairfax Water Document Security License and Non-Disclosure Agreement prior to dissemination of any Confidential Information to such employees, consultants, and subcontractors. The Licensee will submit originals of each such signed Agreement to Fairfax Water promptly following execution thereof.
- D. Record Keeping

Licensee and its employees, consultants, and subcontractors must maintain a list of all entities to which the Confidential Information is disseminated, in accordance with sections 2 and 3 of this clause. This list must include at a minimum: (1) name of federal, state, or local government, entity, utility, or firm to which the Confidential Information has been disseminated; (2) the name of the individual at the entity or firm who is responsible for protecting the Confidential Information, with access strictly controlled and limited to those individuals having a legitimate business need to know such information; (3) contact information for the named individual and (4) a description of the Confidential Information provided. Once “as-built “drawings are submitted, the Licensee must collect all lists maintained in accordance with this clause, including those maintained by any subcontractors or suppliers, and submit them to Fairfax Water’s Resident Engineer in Charge of Design and/or Construction.

**Section 5 – Indemnity by Licensee; Obligation to Notify and Assist Fairfax Water of Unauthorized Disclosure:**

The Licensee will indemnify and hold Fairfax Water harmless for and against any breach of this Agreement by the Licensee or any of its Authorized Representatives. The Licensee will notify Fairfax Water immediately, in the manner prescribed in Section 7 hereof, upon discovery of any unauthorized access, use, and/or disclosure of the Confidential Information whether by the Licensee, any Authorized Representative, or any third party, or any other breach of this Agreement. The Licensee will cooperate with Fairfax Water in every reasonable way to help Fairfax Water regain possession of the Confidential Information and prevent its further unauthorized access, use, or disclosure including but not limited to pursuing court proceedings to restrain the Licensee’s Authorized Representatives, employees, consultants, or agents, or any third party from unauthorized use or disclosure of Confidential Information.

**Section 6 – Incidents:**

Every improper access, use, and/or disclosure of Confidential Information must be immediately reported to Fairfax Water in the manner prescribed in Section 7 below.

**Section 7 – Notices:**

Except for notices required or permitted under Sections 5, 6, or 8 of this Agreement, any notice provided under or in connection herewith must be in writing and must be: (a) delivered in person; (b) sent by first class mail, or registered mail; or (c) sent by nationally-recognized overnight courier, in each case posted to the appropriate address set forth in the first paragraph of this Agreement and to the attention of the individuals whose names are set forth below:

For Fairfax Water: Attention: Elizabeth B. Dooley, CPPO, CPPB  
[Edooley@fairfaxwater.org](mailto:Edooley@fairfaxwater.org) (email)

For Licensors: Attention: \_\_\_\_\_  
Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

Any notice required or permitted under Sections 5, 6 or 8 of this Agreement will be transmitted by or on behalf of the party giving notice as follows: (i) immediately, to the fax number and e-mail address designated above for receiving party; and (ii) promptly thereafter, to the physical address for the receiving party in the manner specified in the first sentence of this Section 7. Either party may change its address for notices hereunder by sending notice to the other party in the manner specified this Section. Notices will be considered to have been given at the time of actual delivery in person, by fax, or by e-mail, three (3) business days after deposit in the mail as set forth above, or one (1) business day after delivery to a nationally-recognized overnight courier service for next-day delivery.

**Section 8 – Term and Termination:**

Unless terminated sooner in accordance with this Section, the term of this Agreement (the “Term”) will commence on the Effective Date and will remain in effect until final completion of the Services by the Licensee; provided, however, that notwithstanding the expiration of the Term or other termination of this Agreement, the Licensee will continue to be bound by all confidentiality restrictions and limitations of this Agreement so long as Licensee remains in possession of any Confidential Information. If Licensee fails to comply with any provision of this Agreement, then Fairfax Water will have the right to

terminate this Agreement by sending written notice of termination to the Licensee. Any such termination will be effective immediately upon receipt by the Licensee of Fairfax Water's notice of termination. Upon the expiration of the Term or other termination of this Agreement, the Licensee immediately will cease using the Confidential Information for any purpose and will, at Fairfax Water's option and written request: (a) promptly return all originals, copies, reproductions and summaries of the Confidential Information, and notes made therefrom; or (b) certify destruction of the same in a secure manner so as to make inadvertent recovery impossible and intentional recovery impractical.

**Section 9 – NO WARRANTY; DISCLAIMER OF LIABILITY; WAIVER OF CLAIMS:**

- A. FAIRFAX WATER MAKES NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS OF ANY KIND, STATUTORY OR OTHERWISE, WITH RESPECT TO THE CONFIDENTIAL INFORMATION, THE CONFIDENTIAL INFORMATION'S CONTENT, ACCURACY, COMPLETENESS, PERFORMANCE, THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OR THIRD-PARTY RIGHTS, OR THE RESULTS TO BE OBTAINED FROM QUERIES OR USE OF THE CONFIDENTIAL INFORMATION, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE OR THOSE ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. ALL CONFIDENTIAL INFORMATION IS EXPRESSLY PROVIDED 'AS IS' AND 'WITH ALL FAULTS'.
- B. Neither Fairfax Water nor any of its members, officers, employees or authorized representatives will in any event be liable for any damage, claim, or loss of any kind arising from or in connection with the license granted herein or the Licensee's use of the Confidential Information. THE LICENSEE ACKNOWLEDGES AND AGREES THAT IT WILL HAVE NO REMEDY AT LAW OR IN EQUITY AGAINST FAIRFAX WATER OR ANY OF ITS MEMBERS, OFFICERS, EMPLOYEES OR AUTHORIZED REPRESENTATIVES IN THE EVENT THAT ALL OR ANY PORTION OF THE CONFIDENTIAL INFORMATION IS INACCURATE, INCOMPLETE OR OTHERWISE DEFECTIVE IN ANY WAY AND HEREBY KNOWINGLY AND INTENTIONALLY WAIVES ANY CLAIM IT HAS OR MAY IN THE FUTURE HAVE AGAINST FAIRFAX WATER, ITS MEMBERS, OFFICERS, EMPLOYEES, OR REPRESENTATIVES BASED UPON ANY OR ALL OF THE FOREGOING GROUNDS.
- C. This Section 9 will survive the expiration of the Term or other termination of the Agreement.

**Section 10 – Interpretation of Confidential Information:**

The Confidential Information has been developed and is maintained by Fairfax Water solely for and in connection with its operations and activities. The use or interpretation of the Confidential Information by Licensee or the Authorized Representatives is their sole responsibility. Fairfax Water does not provide interpretation services with respect to the Confidential Information.

**Section 11 – Injunction Remedy and Attorneys' Fees; Exclusive Jurisdiction and Venue**

The parties hereby acknowledge and agree that monetary damages will not be a sufficient remedy in the event of any unauthorized disclosure or use of Confidential Information and that, as such, Fairfax Water will be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. The Licensee agrees that the exclusive jurisdiction and venue for any action relating to or arising from this Agreement, or the enforcement of any rights thereunder, is either the Circuit Court of Fairfax County, or the United States District Court for the Eastern District of Virginia (Alexandria Division), and Licensee hereby waives any and all

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objections to jurisdiction or venue in those courts. The Licensee hereby waives any requirement for the posting of a bond or other security by Fairfax Water in connection with any such proceeding. In the event that any suit or action is filed to enforce any rights arising from or relating to this Agreement, then the prevailing party in any such action or suit shall be entitled to recover its reasonable attorneys' fees and litigation expenses (including but not limited to expert witness fees and other usual and customary expenses incurred by trial counsel in commercial litigation), as well as all court costs.

### **Section 12 – Hardware and Software:**

The Licensee, at its own expense, shall provide all necessary hardware, software and equipment needed to access and use the Confidential Information.

### **Section 13 – Governing Law:**

This Agreement, its construction, and all rights, remedies and causes of action arising from or relating to it, including any that may be asserted in any action or suit referred to in Section 11 of this Agreement, shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of laws principles.

### **Section 14 – Entire Agreement:**

This Agreement (including the Appendix) constitutes the entire agreement between the parties regarding its subject matter, and merges all prior discussions between them regarding the Confidential Information and the license granted hereunder. This Agreement may not be modified except by a later written agreement signed by both parties. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together will constitute one and the same original instrument. No provision of this Agreement shall be deemed waived by any act or acquiescence on the part of either party unless expressly agreed to in writing and signed by an authorized representative thereof. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Each of the parties, by signing below, represents to the other party that it, he or she has the authority to bind the named person or entity to this Agreement.

### **Section 15 – Waiver of Jury Trial:**

The parties hereby waive any right they may have to a trial by jury in connection with the resolution of any action or suit arising from or relating to this Agreement, including any action or suit referred to in Section 11 of this Agreement.

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**IN WITNESS WHEREOF**, the undersigned parties have caused this Agreement to be executed by their duly authorized representatives, in duplicate copies, each of which shall constitute an original, and effective as of the Effective Date set forth in the first paragraph above.

**FAIRFAX COUNTY WATER AUTHORITY**

By: Elizabeth B. Dooley, CPPO, CPPB

Title: Procurement Manager

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Applicant's Name and Address

By: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**End Of Attachment 5 - Document Security License And Non-Disclosure Agreement**