

## AGREEMENT FOR SERVICE

THIS AGREEMENT is effective on the 1st day of October, 2017, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and **MUELLER COMPANY, LLC** hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

### WITNESSETH:

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

The Contractor shall provide Brass Service Materials, as needed, in accordance with the following, in order of precedence: this Agreement for Service ("Agreement" or "Contract"); the Contractor's proposal dated July 18, 2017 (Exhibit I); and FW's Request for Proposal dated June 21, 2017 (including all addenda) (incorporated by reference) (Exhibit II). In the event that Exhibits I and II contradict or limit this Agreement for Service, this Agreement shall prevail.

No representations, arrangements, understandings or agreements relating to the subject matter exist amongst the parties except as expressed in this Agreement.

### 1.0 PROPOSAL SPECIFICATIONS AND RELATED REQUIREMENTS

#### 1.1 References

Fairfax Water's Approved Products List (APL), latest Version. Comply with the provisions identified in the Brass and Copper Service Fittings section of the APL, as applicable.

#### 1.2 Standards

Product shall adhere to the latest version of:

- A. AWWA C800 – Underground Service Line Valves and Fittings
- B. ASTM F1807 – Standard Specification for Metal Insert Fittings Utilizing a Copper Crimp Ring for SDR-9 Cross-linked Polyethylene Tubing
- C. NSF International 372 Drinking Water System Components – Lead Content
- D. Shall be NSF International 61 approved for use in potable water systems

E. ASTM A536 – Ductile Iron Castings

1.3 Products

A. Approved Manufacturers:

1. Ford Meter Box Company, Inc.
2. Mueller Company
3. Cambridge Brass
4. A.Y. McDonald Manufacturing

B. Design and Performance Requirements:

1. An independent laboratory certification must be provided giving evidence that the brass goods comply with the material standard listed above.
2. Product must be marked with a lead-free identifier (such as "NL" or "LF" and with verifying agency's mark.

1.4 Delivery Locations

Orders placed by FW will normally be for delivery within Fairfax County. FW has three property yards within Fairfax County. One is located in Chantilly, Virginia, 20151, one is located in Falls Church, and the other is located in Lorton, Virginia, 22079. These addresses are subject to change in the duration of the contract.

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

1.6 Packing List

A packing list shall accompany every shipment. The absence of a packing slip or required shipping order information may cause refusal of the shipment. The packing list shall contain: Purchase Order number, Delivery release number, item description, quantity shipped, quantity ordered, and quantity backordered (if any).

## 1.7 Priority Customer

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

## 1.8 Warranty

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

## 2.0 TERMS AND CONDITIONS

This Agreement is subject to the following Terms and Conditions:

### 2.1 Antitrust

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

### 2.2 Annual Economic Price Adjustment

In the case of annually renewable contracts, Contractor may submit a request for contract price increases once annually for each renewal period. Annual increases

will be the same as the then current rates as announced by applicable Federal and State Agencies.

### 2.3 Assignment of Interest

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

### 2.4 Availability of Funds

It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

### 2.5 Compliance with Laws

Contractor hereby represents and warrants that:

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

### 2.6 Contract Changes / Change Orders

- A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract shall affect or modify any of the terms, conditions, specifications, or obligations contained in the 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 FW General Manager or purchasing designee. 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.

Changes can be made to the contract in any of the following ways:

1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
  - a. By mutual agreement between the parties in writing; or
  - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor's records and/or to determine the correct number of units independently; or
  - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by FW or with the performance of the contract generally.

**2.7 Drug-free workplace to be maintained by contractor\***

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the

foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **2.8 Employment Discrimination by Contractor Prohibited; Required Contract Provisions\***

The following provision is required to be in every contract of more than \$10,000 (Virginia Public Procurement Act, § 2.2-4311)

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

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

B. The contractor will include the provisions of the foregoing paragraphs 1, 2 and 3 in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

## **2.9 Ethics in Public Contracting\***

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from this solicitation, are proper and in accordance therewith.

## **2.10 Examination of Records**

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

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

#### 2.11 Governing Law; Venue; Waiver of Jury Trial\*

Notwithstanding any provision to the contrary, 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.

#### 2.12 Indemnification and Responsibility for Claims and Liability

With respect to any contract Contractor is bound by the following:

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

## 2.13 Insurance

- A. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports.

The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.

- B. 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
- C. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:
1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
  2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide policy limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and Excess Liability insurance with policy limits of not less than \$5,000,000 per occurrence and in the aggregate. Further, the Contractor shall maintain professional and cyber liability insurance with policy limits of not less than \$1,000,000 per occurrence and a minimum aggregate of \$2,000,000 for the purpose of

providing coverage for claims arising out of the performance of its services under this Contract.

- D. **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 \$1,000,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.
- E. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

#### 2.14 Partial Invalidity

Neither any payment for, nor acceptance of, the whole or any part of the services by FW, nor any extension of time, shall operate as a waiver of any provision of any Contract resulting from this RFP, nor of any power herein reserved to FW, or any right to damages herein provided, nor shall any waiver of any breach of any Contract be held to be a waiver of any other or subsequent breach. Failure of FW to require compliance with any term or condition of any Contract shall not be deemed a waiver of such term or condition or a waiver of the subsequent enforcement thereof.

#### 2.15 Payment

- A. **Invoices:** All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or E-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
- B. **Terms:** All payments will be Net 30 from the date of receipt of a valid invoice at the 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:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. Invoices shall show the FW Purchase Order or contract number and either the social security (for individual Contractors) number or the federal employer identification number (for proprietorships, partnerships, and corporations) and are subject to review and approval by the FW Project Manager.

- D. **Partial Payments:** Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Offeror must waive the requirement in order to remain in consideration.
- E. **Unreasonable Charges:** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

#### 2.16 Payment Clauses Required in All Contracts\*

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

- A. That any contract awarded by FW include the following clauses:
  - 1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
    - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
    - b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.
  - 2. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
  - 3. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
- B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of

FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

#### 2.17 Price Firm Period

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

#### 2.18 Tax Exemption

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 exempt number is 54-6025290.

#### 2.19 Termination of Contract

- A. **For Cause.** In the event that the Contractor: (1) fails to deliver any Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any 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.
- B. 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.
- C. **For Convenience.** FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The

Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

## 2.20 Virginia Freedom of Information Act

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, any interested person, firm, or corporation, in accordance with the Virginia Freedom of Information Act.

## 2.21 Contractual Disputes \*

Contractual claims, whether for money or for other relief, will be submitted in writing not later than 60 days after final payment; provided however, that written notice of the Contractor's? Intention to file such claim must:

Be delivered to the attention of FW's Procurement Representative assigned to this contract at the address shown on the cover sheet of this RFP, not later than five days after the occurrence or of the beginning of the Work upon which the claim is based; and

Contain a reasonably detailed description of the basis of the claim otherwise the claim will be deemed to have been waived. FW will make a written decision upon any such claim within 60 days after submittal of the claim. The 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 the Consultant Contractor initiates legal action as provided in Section 2.2-4364 of the Virginia Code. Failure of FW to render a decision within 90 days will not result in the Consultant 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 the Consultant's Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2-4365 of the Virginia Code has been established for contractual claims under this Agreement.

No claim of any nature will be made against FW by or on behalf of a subcontractor unless the Consultant Contractor has first: (a) evaluated such claim thoroughly and determined it to be meritorious; (b) issued a written notice to the subcontractor finding the subcontractor's claim to be meritorious and setting forth any additional compensation or additional days to be paid or granted to the subcontractor on account of such claim; and (c) paid the subcontractor in full for such claim. In presenting such a claim, the Consultant Contractor will provide FW with a copy of the written notice to the subcontractor and with evidence of payment in full of the subcontractor's claim. No such claim will exceed the amount actually paid to the subcontractor.

## **2.22 No Employment of Unauthorized Aliens \***

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

## **2.23 Faith Based Organizations \***

FW does not discriminate against faith-based organizations.

## **3.0 COMPENSATION**

Compensation shall be as outlined in Attachment A.

**[SIGNATURES ON FOLLOWING PAGE]**

**FAIRFAX COUNTY WATER AUTHORITY**

8570 Executive Park Avenue  
Fairfax, VA 22031

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

By: 

Name: Donald R. Leeg

Title: Procurement Manager

Date: 10/5/17

**MUELLER COMPANY, LLC**

500 W. Eldorado St.  
Decatur, IL 62522

Phone: (800) 423-1323  
Fax: (800) 871-2195

By: 

Name: Kim Lillpop

Title: Customer Relations Mgr.

Date: 10/5/17