

**ATTACHMENT A**

**BASIC ORDERING AGREEMENT FOR ENGINEERING SERVICES**

The form of Basic Ordering Agreement for Engineering Services (the “Contract” or “Agreement”) is set forth below for Offeror’s reference and information. Following ranking of proposals in accordance with Section 3.10 of this RFP, FW will provide one or more qualified Offerors with an opportunity to submit a full and complete listing of: (a) any and all exceptions they intend to take with regard to the terms and conditions of the Agreement; and (b) any and all additional or alternative language they intend to propose with respect to such Agreement. **Offerors are hereby advised that the terms and conditions marked with an asterisk (\*) in the following Agreement are mandatory and nonnegotiable.**

**CONTRACT NO. \_\_\_\_\_**

**THIS AGREEMENT**, made and entered into effective as of the \_\_\_\_\_ day of \_\_, 20\_\_ (the “Effective Date”), by and between the **FAIRFAX COUNTY WATER AUTHORITY**, hereinafter called “FW”, and \_\_\_\_\_, hereinafter called the “Consultant,” covers professional engineering services to be provided by the Consultant and the fees to be paid by FW in return for the performance of these services (the “Contract”).

**1. CONTRACT DOCUMENTS**

A. The Contract will consist of the following items, which are listed in order of precedence and which together will be referred to as the “Contract Documents:”

- i. Any Contract Changes or Amendments as discussed in Section 14;
- ii. Any Task Orders, and all exhibits thereto, including Scopes of Work, Schedule and Not-to-Exceed Fee estimates, as applicable;
- iii. The fully-executed Contract, and all exhibits thereto;
- iv. Any Addenda to RFP 19-126 (the “RFP”);
- v. The RFP and
- vi. The successful Offeror’s Proposal.

In resolving any conflict, error, ambiguity, or discrepancy between or among any of the Contract Documents, the Contract Documents will be accorded the order of precedence set forth above.

B. Anything called for by one of the Contract Documents and not called for by the others will 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 will have the intended effect.

- C. All time limits stated in the Contract Documents, including but not limited to the time for completion of the Work, are of the essence.
- D. The Consultant shall commence the Work upon the Consultant's receipt of an executed Task Order, Purchase Order and Notice to Proceed.

## **2. SERVICES TO BE PROVIDED**

The Work to be performed by the Consultant hereunder (the "Work") generally consists of consulting and engineering services relating to the Water Main Engineering Professional Design Services described in Section 2.1 of the RFP and detailed in any Task Order(s) issued by FW hereunder. The Consultant hereby agrees to perform all Work during the Contract Term in accordance with the Contract Documents. The Work will be assigned pursuant to one or more written Task Orders that will be authorized and issued by FW's Director of Planning & Engineering, and memorialized through an authorized Purchase Order (PO) issued by the Purchasing Manager. The scope of services for each Task Order issued hereunder will be set forth in writing and incorporated therein. Each Task Order will include an estimate of hours for all staff positions involved, a schedule and Work to be performed with associated deliverables.

## **3. TIME OF COMPLETION**

- A. Time is of the essence with respect to the Consultant's performance of the Work. The Work included in the Contract will be completed to the satisfaction of FW within the negotiated schedule for each Task Order.
- B. Neither FW nor the Consultant will be liable for any fault or delay caused by any acts of God, war, strikes, walkouts, fires or natural calamities.

## **4. CONTRACT TERM**

This Contract shall commence on the Effective Date and will continue for a term of one year or when the cumulative total project fees incurred hereunder reach \$6,000,000 (the "Annual Cap"), whichever occurs first (the "Initial Term"). FW may, in its discretion, elect to renew the Contract for up to four additional one-year terms, subject in each such instance to the Annual Cap (each such additional term to be referred to herein as a "Renewal Term"). Any such renewal will be exercised by FW, if at all, by issuance of written notice to the Consultant on or before the date that is 30 days prior to the expiration of the then-current contract period. Engineering fees and charges applicable with respect to any Renewal Period will be determined in accordance with Section 6 of this Contract. The Initial Term and any Renewal Terms will be collectively referred to herein as the "Contract Term."

## **5. ENGINEERING FEES**

- A. During the Contract Term, the Consultant will perform the Work described in Section 1 above for a fee based on the negotiated scope of work, schedule and applicable hours for each Task Order multiplied by hourly rates set forth on [Exhibit A] "Rates and Fees" (subject to adjustment in the manner prescribed in Section 6)

- B. Hourly pricing shall be firm and fixed during the Initial Term, and subject to Annual Economic Price Adjustments for each Renewal Term, if any.
- C. The maximum billing for Work performed during any contract year during which this Contract is in effect will be \$6,000,000. No unused amounts may be carried forward from one contract year to another. Individual Task Orders will not exceed \$2,500,000.
- D. Billings for the Work, including all Direct Expenses, will not exceed the maximum estimated amount set forth in the Task Order without the prior written approval of FW. The parties to this Contract must agree to any changes in the maximum estimated amounts, which will then be incorporated into the corresponding Task Order by written amendment.

## **6. ANNUAL ECONOMIC PRICE ADJUSTMENT**

- A. The Consultant may submit a request for an economic price adjustment no more than once annually for each renewal year. Economic price adjustments will be limited to the increase specified in the Consumer Price Index –Urban for the 12-month period ending 90 days prior to the end of the then current contract year. As employed herein, the term “Consumer Price Index” will mean the Consumer Price Index for all Urban Users for the Metropolitan Washington DC area as published by the Bureau of Labor Statistic, US Department of Labor. No other economic price adjustments will be allowed.
- B. The request for an economic price adjustment will be in writing and will include at a minimum the cause for the adjustment; and the amount of the change request with documentation to support the requested adjustment (i.e. appropriate BLS, Consumer Price Index (CPI-U).
- C. Negative BLS index: If the agreed upon index is a negative number, then the Consultant will, upon notice by FW, immediately reduce contract rates by the corresponding amount for the subsequent renewal year.

## **7. ACCESS TO DOCUMENTS**

FW and its duly authorized representatives (each, an “Auditing Party”) will, at any time and from time to time during the term of the Contract and until the date that is five years after the date on which final payment has been made thereunder and all other pending matters have been resolved, have access to all Project Documents in the possession, custody, control or ownership of the Consultant for purposes of performing an audit, examination, excerpt and/or transcription. The Project Documents (as defined in Section 26 below) will include, but will not be limited to: job diaries, bid proposal worksheets, subcontracts, purchase orders, daily reports, invoices, scheduling materials, financial and accounting records, internal memoranda, notes and other documents, records and materials relating in any way to the Project; provided, however, that the term “Project Documents” will in no event be construed to include documents, records or other materials protected by the attorney-client privilege. The Consultant hereby covenants and agrees that, within 10 days after the Consultant receives written notice from an Auditing Party, it will:

- A. Make the Project Documents available for inspection and copying during the Consultant's regular business hours by such Auditing Party, with copies being provided at a reasonable cost payable by the Auditing Party; and
- B. Deliver to the Auditing Party an index of all documents and materials which the Consultant claims are protected by the attorney-client privilege, stating for each such document the addressee(s), the author(s), any other recipients, the date, length (if applicable), the type of document or material, and a description of the subject matter sufficient to assess the applicability of the claim of privilege without revealing information itself privileged. Any failure on the part of the Consultant 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 of the Consultant. The Consultant hereby agrees that it will pay and be responsible for all costs and expenses (including court costs and attorney's fees) incurred by an Auditing Party in enforcing this provision.

**8. INTELLECTUAL PROPERTY RIGHTS**

The Consultant represents and warrants that neither the Work performed by the Consultant and/or any subcontractor or subconsultant hereunder, nor any part or aspect thereof (including any deliverable), will infringe or constitute a misappropriation of any right of any third party, including any copyrights, patent rights, trademark rights, trade secret rights or confidentiality rights.

**9. ASSIGNMENT OF INTEREST**

The Consultant will not assign any rights, obligations or interests arising under or in connection with this Contract without prior written consent of FW, which FW will be under no obligation to grant.

**10. AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA \***

Each Consultant that is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership, or registered as a registered limited liability partnership, hereby makes the following representations, warranties and covenants: (a) it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law; (b) it will not allow its existence to lapse or its certificate of authority or registration to transact business in Virginia, if so required under Title 13.1 or Title 50 of the Virginia Code, to be revoked or cancelled at any time during the Contract Term; and (c) it will require each Subcontractor and Sub-Consultant who is organized as set forth in the first clause of this paragraph to make the representations and warranties set forth in clauses (a) and (b) above.

**11. AVAILABILITY OF FUNDS \***

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

## **12. COMPLIANCE WITH LAWS**

The Consultant hereby represents, warrants, covenants, and agrees as follows:

- A. It will comply with all federal, state and local laws, regulations, and ordinances applicable to the Work and/or to its activities and obligations under this Contract; and
- B. It will obtain at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary for the lawful performance of its obligations under this Contract.
- C. The Consultant hereby covenants and agrees to comply with all federal, state and local laws, rules, regulations, guidelines, and orders applicable to the Project and/or the work and services to be performed hereunder (collectively referred to herein as the “Applicable Laws”).

## **13. CONSULTANT’S REPRESENTATIONS**

- A. The Consultant represents and warrants to FW that it is a duly organized and licensed entity that employs qualified and experienced personnel who specialize in performing the type of engineering services required hereunder. The Consultant covenants and agrees to provide a sufficient number of personnel (hereinafter referred to as the “Project Team”) who are suitably qualified and experienced and who are in all respects acceptable to FW to perform the Work in an efficient and timely manner. Individual members of the Project Team and their normal work location will be identified by the Consultant in its Proposal and incorporated by reference in the Agreement. The Project Team may not be replaced, substituted or relocated for so long as they remain in the employ of the Consultant, without the prior written consent of FW. The Consultant covenants and agrees that, for so long as they are in the employ of the Consultant, members of the Project Team will be readily available to perform the Work as required by FW.
- B. The Consultant covenants and agrees to provide engineering services in accordance with generally accepted and currently recognized engineering practices, procedures and principles, and to exercise the same professional standard of care and of quality as is customarily exercised under similar circumstances by professional engineers providing services in the Washington, D.C., metropolitan area. The Consultant additionally covenants and agrees to diligently and conscientiously devote its resources to the performance of the Work during the Contract Term.
- C. The representations and warranties of the Consultant contained in the Contract Documents will survive the execution of this Contract.
- D. No third party is entitled to rely on any of the representations, warranties and agreements of FW and the Consultant contained in the Contract Documents. FW and the Consultant assume no liability to any third party because of any reliance on the representations, warranties and agreements of FW and the Consultant contained in the Contract Documents.

#### **14. CONTRACT CHANGES OR AMENDMENTS**

This Contract sets forth the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, arrangements and understandings with respect thereto between FW and the Consultant. No modification, amendment, addition to or termination of this Contract or any Task Order, nor any waiver of any of any provisions thereof, will be valid or binding upon FW unless made in writing and signed by duly-authorized representatives of both the Consultant and FW.

#### **15. CONTRACTUAL DISPUTES \***

A. 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 Consultant's intention to file such claim must:

- i. Be delivered to the attention of FW's Senior Construction Buyer and Director of Planning & Engineering, 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
- ii. 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 Consultant 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 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 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 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.

B. No claim of any nature will be made against FW by or on behalf of a subcontractor or subconsultant unless the Consultant 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 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.

#### **16. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONSULTANT \***

During the performance of this Contract, the Consultant agrees to:

- A. Provide a drug-free workplace for the Consultant's employees;
- B. Post in conspicuous places, available to the Consultant's 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;
- C. State in all solicitations or advertisements for employees placed by or on behalf of the Consultant that the Consultant maintains a drug-free workplace; and
- D. 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.

**17. EMPLOYMENT DISCRIMINATION BY CONSULTANT PROHIBITED \***

- A. During the performance of this Contract, the Consultant agrees as follows:
  - i. The Consultant 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 Consultant. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - ii. The Consultant, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, will state that such Consultant is an equal opportunity employer.
  - iii. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for the purpose of meeting the requirements of this Section.
- B. The Consultant will include the provisions of the foregoing paragraphs (A)(i), (ii) and (iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor, subconsultant or vendor.

**18. ETHICS IN PUBLIC CONTRACTING**

The Consultant hereby certifies that it has familiarized itself with Sections 2.2-4367 through 4377 of the Act ("Ethics in Public Contracting"), and that all amounts received by it and all actions by or on behalf of the Consultant, pursuant to a contract resulting from this solicitation, will be proper and in accordance therewith.

## **19. NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE**

FW is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1990.

Specifically, FW may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

## **20. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL**

Notwithstanding any provision to the contrary, the Contract Documents will be governed by and construed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of law principles. Any dispute arising hereunder that is not otherwise resolved by the parties will be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Consultant and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

## **21. INDEMNIFICATION**

The Consultant will indemnify and hold harmless FW and FW's members, officers, authorized representatives and employees from and against any and all claims, losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with:

- A. Any material breach of the representations, warranties, agreements and covenants of the Consultant contained in the Contract Documents;
- B. any injuries to persons or property caused by any negligent or wrongful act or omission of the Consultant or its subcontractors, subcontractors, employees, or other authorized representatives;
- C. any claims filed by the Consultant which are adjudicated in favor of FW; or
- D. any claims filed against FW by a subcontractor or employee of the Consultant.

## **22. INSURANCE**

- A. The Consultant will procure and maintain at its own expense, at all times throughout the Contract Term, insurance of such type and in such amounts as may be necessary to protect its interests and the interests of FW against hazards or risks of loss as hereinafter specified.

All such insurance will be underwritten by responsible and solvent companies, acceptable to FW, and authorized to do business in the Commonwealth of Virginia. All insurance policies must be from 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. Each insurance policy shall contain a provision requiring that not less than 30 days written notice will be given to FW before the cancellation, non-renewal or material modification of such policy or coverage. Without limiting the requirements set forth herein, the insurance coverages will include a minimum of:

- i. Worker's Compensation and Employer's Liability insurance as required by the Commonwealth of Virginia.
  - ii. Business Automobile and Vehicle Liability Insurance. This insurance will be written in comprehensive form and will protect the Consultant and FW against claims for injuries to members of the public and/or damages to the property of others arising from the Consultant's use of motor vehicles or any other equipment and will cover operation with respect to on-site and off-site operations. Such insurance coverage will extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability will not be less than a \$1,000,000 combined single limit, each accident.
  - iii. Commercial General Liability. This insurance will be written in comprehensive form and will protect the Consultant and FW against claims arising from injuries to members of the public or damage to property of others arising out of any negligent act or omission to act of the Consultant or of any of its agents, employees, or subcontractors. The limit of liability will not be less than \$2,000,000 combined single limit.
  - iv. Professional Liability Insurance. Unless otherwise expressly agreed in writing by the Consultant and FW, the Consultant will furnish professional liability insurance coverage, including errors and omissions, in an amount not less than \$2,000,000. Professional subcontractors will provide limits commensurate with the responsibilities of their work.
  - v. Cyber Security Liability Insurance Coverage: \$5,000,000 per occurrence.
- B. The insurance coverage specified above will constitute minimum requirements and FW will be included as an additional insured in insurance coverages identified in Sections 22(A)(ii) and (iii).
- C. The Consultant shall file with FW evidence demonstrating its compliance with the foregoing insurance requirements not later than three (3) business days following the Effective Date of this Contract and within fifteen (15) days after renewal, material modification or replacement thereof. Such evidence shall be in the form of one or more certificates of insurance, each of which shall contain a requirement for a minimum of thirty (30) days prior written notice to FW of any cancellation, non-renewal or material

modification with respect to any such insurance coverage. Upon request by FW, the Consultant promptly shall cause copies of any or all insurance policies to be delivered to FW.

- D. FW may require such information from the Consultant as it deems necessary to assess the Consultant's financial ability to pay any deductibles under the foregoing policies of insurance.
- E. The maintenance in full force and effect of all insurance coverages required hereunder shall be a condition precedent to the Consultant's exercise or enforcement of any of its rights under this Contract.
- F. Nothing herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

**23. NO EMPLOYMENT OF UNAUTHORIZED ALIENS \***

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

**24. FAITH BASED ORGANIZATIONS \***

FW does not discriminate against faith-based organizations.

**25. NO WAIVER OR ESTOPPEL**

- A. Failure by FW in any instance to insist upon observance or performance by the Consultant of any of the terms, conditions or provisions set forth in the Contract will not be deemed a waiver of any such terms, conditions or provisions. No waiver will be binding upon FW unless in writing and signed by FW, and any such waiver will be limited to the particular instance referred to in the written document memorializing the waiver. Neither any payment for, nor acceptance of, the whole or any part of the services by FW, nor any extension of time, will operate as a waiver of any provision of this Contract, nor of any power herein reserved to FW, or any right to damages herein provided, nor will any waiver of any breach of this Contract be held to be a waiver of any other or subsequent breach.
- B. Neither FW, nor any officer, member or employee thereof, 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, at any time either before or after final completion and acceptance of the Work and payment therefor.

**26. OWNERSHIP OF PROJECT DOCUMENTS**

All designs, drawings, specifications and other instruments of service created by or on behalf of the Consultant in connection with the Project, and any and all copyrights and other intellectual property rights therein (together referred to herein as the "Instruments of Service") will be deemed for all purposes to be the property of FW. All other work products of the Consultant in connection

with the Project and all documents and records in the possession, custody or control of the Consultant relating to the Project (together referred to herein as the "Project Documents") will be and will remain the property of the Consultant. Notwithstanding the foregoing, at any time during the term of the Contract and until the expiration of three years from the date of final payment hereunder, FW and its duly authorized representatives will have access to and will have the right to examine and copy the Project Documents as set forth in Section 7 above. Except as expressly set forth herein, this provision is not intended to and will not be construed to confer upon any person or entity that is not a party to this Contract any right of access to the Project Documents under statute or otherwise.

## **27. PAYMENT**

- A. During the performance of the Work, the Consultant will prepare and submit to FW each month an invoice in an acceptable form (the "Invoice") describing the Work performed in the preceding month, the hours expended by each specific employee, employee position, employee billing rate, billable costs, and the itemized Direct Expenses incurred (as such term is defined below). All Invoices will be transmitted in writing to FW's Accounts Payable Department with a copy to FW's Director of Planning & Engineering. The Invoice will be divided into parts consistent with the Scope of Work or Task Order to which it relates and will, where applicable, indicate a total part value, total invoice value and total billed-to-date value for each part. The Invoice will include the Consultant's federal employer identification number. FW will pay an approved Invoice within 30 days after its receipt. Any amounts not paid when due will accrue interest at the rate of 1% per month.
- B. Consultant monthly invoices shall be billed at hourly rates of the current contract term rates with any agreed upon CPI-U adjustment factors.
- C. Direct Expenses are those incurred by virtue of the Work and do not include those incidental to the normal conduct of business. Direct Expenses include, but are not limited to, authorized travel and subsistence (which will be limited to common carrier, coach class, and a per diem authorized in advance by FW), ground transportation, laboratory fees, computer charges, reproduction expenses, and special supplies. Reports, drawings and specifications prepared by the Consultant will be furnished to FW at the cost of reproduction. Note: Direct Expenses allowances will be established prior to contract award and may not be accelerated during the term of the Contract. Reimbursement for ground transportation will be limited to the amount currently authorized for FW employees.

## **28. PAYMENT CLAUSES REQUIRED IN ALL CONTRACTS \***

- A. Within seven calendar days after receipt of each payment from FW, the Consultant will:
  - i. Pay each Subcontractor an amount equal to the percentage of the Work attributable to such Subcontractor; or
  - ii. Notify FW and the Subcontractor in writing of the intention to withhold all or part of the amounts due the Subcontractor, and state the reason for such withholding.

- B. In the event the Consultant fails to submit a timely invoice, and that failure is due exclusively to the actions of the Consultant, each Subcontractor will have the right to be paid by the Consultant upon demand, the amounts due.
- C. The Consultant will pay interest on amounts owed to any Subcontractor which remain unpaid seven days after the Consultant's receipt of payment from FW, provided, however, that amounts owed any Subcontractor which have been withheld properly, pursuant to this Section, will not accrue interest. Interest on amounts due any Subcontractor and unpaid will accrue at the rate of .5% per month; provided, however that the Consultant's obligation to pay interest hereunder will in no event be construed to be an obligation of FW. No contract modification will be made, and no cost reimbursement claim will be submitted, for purposes of reimbursement for the interest charge.
- D. The Consultant will include in each of its subcontracts agreements a provision requiring each of its subcontractors to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier subcontractor.
- E. Upon completion of the work or Task Order, Fairfax Water will prepare a Consultant evaluation reflecting the quality of the work performed. The evaluation will be provided to the Consultant for review and information.
- F. Upon completion of the work, a final payment affidavit and release of claims form will be executed by the Consultant. FW will not process final payment until such documentation has been received.

## **29. PROHIBITION AGAINST CONTINGENT FEES**

The Consultant warrants that he has not employed any company or person other than a bona fide employee working for the Consultant to solicit or secure this Agreement and that he has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Consultant any favor, commission, percentage, gift, or any other compensation contingent upon or resulting from the award or making of this or any other agreement. In the event of breach of this provision, FW will have the right to terminate this or any other agreement with the Consultant without liability, and, in its discretion, to deduct from amounts due under this Agreement, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration, as well as the cost of such recovery including, without limitation, reasonable attorney's fees.

## **30. SUBCONSULTANT AND/OR SUBCONTRACTOR SERVICES**

In the event that services of subcontractors or subconsultants are authorized in advance by FW for portions of the Work, the Consultant will be responsible for contracting for these services. In such event the Consultant will so notify FW in writing and identify such subcontractors that may be required. FW in its sole and absolute discretion, will have the right to determine whether subcontractors or subconsultants are to be used and must agree with the rates to be paid to such subcontractors. FW reserves the right to reject any subcontractors or subconsultants proposed by the Consultant. In the event these subcontracted services are utilized and unless otherwise directed

by FW, the Consultant will obtain at least three proposals and furnish these proposals, with the Consultant's recommendation, to FW for its approval prior to engaging any subcontractor.

### **31. 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. The Consultant's obligation to pay any such taxes is not impacted in any way by its contractual relationship with FW.

### **32. TERMINATION OF CONTRACT**

#### **A. Termination for Cause.** In the event that the Consultant:

- i. fails to perform the Work in accordance with the terms and conditions set forth in the Contract and does not cure such failure within three business days after receipt of written notice from FW specifying such failure;
- ii. otherwise fails to perform any material obligation set forth therein; or
- iii. becomes insolvent, is adjudicated bankrupt, makes an assignment for the benefit of creditors or enters into bankruptcy or dissolution proceedings, then FW, without prejudice to any other rights or remedies it may have at law or in equity, will have the right to terminate the Contract by issuing a written notice of termination to the Consultant. Such notice of termination will describe in reasonable detail the grounds for the termination and will take effect on the later of:
  - a. the date specified as the effective date of termination in the notice; or
  - b. if no such date is specified, the date of Consultant's receipt of such notice of termination, as determined in accordance with these Contract Documents.

If, after issuance of a notice of termination under this Section 32(A), it is determined for any reason that cause for such termination did not exist, then the rights and obligations of the parties will be the same as if the notice of termination had been delivered under the provisions of Section 32(B) hereof; provided, however, that the Consultant in such event will be deemed to have received seven days prior written notice of such termination. In such event, any compensation due the Consultant pursuant to Section 32(B) will be offset by the cost to FW of remedying the default by the Consultant. The Consultant will in no event be entitled to receive any consequential damages or any anticipated profits with respect to Work not yet furnished to, and accepted by, FW as of the effective date of any such termination.

#### **B. Termination for Convenience.** FW will have the right to terminate the services of the Consultant at its own convenience for any reason or no reason upon seven days prior written notice to the Consultant. In the event of termination under this Section, the Consultant will receive compensation for all Work completed through the date of such

termination; provided, however, that upon receipt of notice of termination the Consultant will, as soon as practicable, suspend all Work within its control (including Work performed by subcontractors or special contractors, if any) and will not incur any additional expense for which it seeks compensation. Furthermore, daily compensation for Work performed during the period between notice of termination and termination will in no event exceed: (i) the average daily compensation paid to the Consultant for Work performed during the three months immediately preceding the date of the notice of termination, or (ii) in the event the Contract is terminated prior to the date three months after the date of execution hereof, the average daily compensation paid to the Consultant for Work performed during the period beginning on the date hereof and ending on the date immediately preceding the date of the notice of termination.

### **33. SUCCESSORS AND ASSIGNS**

The Contract will not be assigned, sublet or transferred, in whole or in part, by operation of law or otherwise, by either of the parties hereto except with the prior written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will operate to release or discharge the assignor from any duty or responsibility under the Contract. Nothing contained in this Section will prevent the Consultant, with the consent of FW, from employing (in accordance with the terms of the Contract Documents) such independents and subcontractors as the Consultant may deem appropriate to assist in the performance of his responsibilities hereunder. Subject to the provisions of this Section, the Contract Documents will be binding upon and inure to the benefit of each of the parties thereto, and their respective successors and assigns.

### **34. VIRGINIA FREEDOM OF INFORMATION ACT**

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

### **35. REMEDIES NOT EXCLUSIVE**

Unless otherwise expressly provided herein, all remedies provided for in this Contract will be in addition to all other remedies available to FW, at law or in equity.

### **36. NATURE OF RELATIONSHIP**

The relationship of the Consultant to FW will be that of an independent contractor and not that of an employee. FW will not possess the right to control or direct the Consultant with regard to the means and methods by which the Consultant will perform the Work. The Consultant will not have the authority to enter into any contract, agreement, obligation or representation on behalf of FW.

### **37. NOTICES**

All notices and other communications hereunder shall be in writing and shall be hand delivered, sent by email (with a duplicate copy transmitted by another method of delivery authorized

hereunder), sent by first class mail, postage prepaid, or sent by nationally recognized express courier service. Such notices and other communications shall be effective upon receipt if hand delivered or sent by email (with a duplicate copy transmitted by another method of delivery authorized hereunder), three (3) days after mailing if sent by mail, and one (1) day after dispatch if sent by express courier, to the addresses and/or emails set forth beneath the signatures of each party to this Contract. Either party may designate, by written notice given to the other in the manner prescribed herein, any further or different addresses and/or email addresses to which subsequent notices shall be sent.

**38. MISCELLANEOUS**

- A. Capitalized terms which are used and otherwise defined in this Contract will have the meanings given them in Section 1.3 of the RFP.
- B. This Contract may be executed in any number of counterparts, each of which will be deemed an original and all of which together will constitute one document.
- C. All provisions required by law to be included in this Contract are hereby deemed incorporated by reference herein, to the same extent as if set forth expressly.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be executed by their duly-authorized representatives effective as of the day and year first above written.

**[FIRM NAME]**

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

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

Address for Notices:

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

Att: \_\_\_\_\_  
Email Address:

**FAIRFAX WATER**

By: \_\_\_\_\_  
Steven T. Edgemon  
General Manager

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

Address for Notices:

Fairfax County Water Authority  
8570 Executive Park Avenue  
Fairfax, Virginia 22031  
Att: Mr. Donald Legg, CPPO, Procurement Manager  
Email Address: [Donnie.legg@fairfaxwater.org](mailto:Donnie.legg@fairfaxwater.org)