



FAIRFAX COUNTY WATER AUTHORITY
8570 Executive Park Avenue, Fairfax, Virginia 22031-2218
www.fairfaxwater.org

REQUEST FOR PROPOSALS

Number:	24-022
Title:	Data Governance, Warehousing, Analytics, Strategy, and Implementation
Date Issued:	April 1, 2024
Deadline for Questions:	April 10, 2024
Addendum 1 Issuance:	April 16, 2024
Deadline for Submitting Proposals:	May 3, 2024 Prior to 2:00 PM Local Prevailing Time
Proposals to Be Delivered to:	Procurement Department Fairfax Water 8570 Executive Park Avenue Fairfax, Virginia 22031
Procurement Contact:	David J. Webb, C.P.M. Procurement Program Supervisor Telephone: 703-289-6227 E-Mail: dwebb@fairfaxwater.org

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I. INTRODUCTION TO FAIRFAX WATER & PROJECT BACKGROUND

Fairfax Water (“FW”) is soliciting proposals for the development and implementation of a comprehensive Data Governance Strategy. Proposals must address the existing Systems (see Attachment G) at FW and provide sufficient flexibility to address changes such as future projects that may change the size of the footprint and the type of supported applications.

1.1. INTRODUCTION TO FAIRFAX WATER

FW’s mission is to provide its customers with reliable and abundant water of exceptional quality at a reasonable price. FW aspires to remain a respected industry leader, upholding its customers’ trust by providing water of exceptional quality and reliability, at a reasonable price, while supporting the high quality of life and economic vitality of the region.

Chartered in 1957 by the Virginia State Corporation Commission as a public, non-profit water utility, FW is governed by a 10-member Board of Directors composed of Fairfax County citizens and appointed by the elected Fairfax County Board of Supervisors. A general manager, supported by a staff of 450 water professionals, manages the day-to-day operations of FW.

FW has one of the lowest commodity rates in the Washington metropolitan region and is one of only a handful of water utilities in the country to receive an AAA rating from the top three financial rating services. The Virginia Department of Health regulates FW’s water quality according to regulations established by the Environmental Protection Agency and based on the Safe Drinking Water Act passed by the U.S. Congress. FW is Virginia’s largest water utility and one of the 25 largest water utilities in the country, serving one out of every four Virginians who obtain their water from public utilities. Nearly two million people in the Northern Virginia communities of Fairfax, Loudoun, Prince William, Fort Belvoir, Herndon, Dulles, Vienna, Alexandria, Falls Church, and Fairfax City depend on FW for superior drinking water.

FW provides water that is treated at four different locations. FW owns and operates the two largest water treatment facilities in Virginia with an average daily water production of 166 million gallons and combined maximum capacity of 376 million gallons per day. The James J. Corbalis Jr. treatment plant is at the northern tip of Fairfax County and the Frederick P. Griffith Jr. treatment plant is on the southern border of Fairfax County. FW also purchases water from the McMillan and Dalecarlia treatment plants in Washington DC. They are part of the Washington Aqueduct, owned and operated by the U.S. Army Corps of Engineers. FW draws raw water from two primary sources: the Potomac River and the Occoquan Reservoir, which is fed by the Occoquan River. The four treatment facilities feed an interconnected distribution system that includes 4,054 miles of water mains, 29,797 fire hydrants, and 103,108 valves.

Additional FW information is available at www.fairfaxwater.org.

1.2. SYSTEMS SUPPORTED AT FAIRFAX WATER

FW currently uses SAP S/4 HANA as its system of record with the following fully operational modules:

- Customer Care and Service
- Financial Accounting / Controlling
- Funds Management
- Materials Management
- Plant Maintenance
- Project Systems
- Human Capital Management

Applications or add-ons utilized at FW are:

- BSI Tax Factory
- Adobe Document Services
- Query Tools
- LiquidUI
- Security Weaver
- SAP Business Objects
- SAP Solution Manger (including ChaRM and EarlyWatch)
- SAP Cloud Connector
- SAP Service Cloud
- SAP BTP Cockpit – SAP Business Application Studio
- Single Sign on provided by a third party
- Contact Center Cloud Platform
- Water Information Management System
- Laboratory Information Management System
- Supervisory Control Data
- ESRI GIS Mapping Software
- Customer Portal provided by a third party
- Inspector Forms Application provided by a third party
- MS Office 365
- MS Power BI

II. PROJECT SCOPE OF SERVICES

2.1 GENERAL

The purpose of this solicitation and the resulting contract is to obtain the services of a qualified offeror to provide a comprehensive solution for Data Governance, Warehousing and Analytics. Our objectives include enhancing data governance practices, improving reporting and dashboard capabilities, implementing a data warehouse/data lake solution, addressing data cleansing inconsistencies, and optimizing reporting. Consideration of existing technology investments, maintainability of recommended solutions and interoperability with existing systems is preferred.

2.2 SCOPE OF RESPONSIBILITIES

Item #	Task	Deliverables
DG.1	<p>Analysis</p> <ul style="list-style-type: none"> • Conduct a thorough assessment of current data management practices: <ul style="list-style-type: none"> – Acquisition – Creation and Storage – Dissemination – Documentation – Include data obtained from public agencies or purchased from commercial vendors • Meet with all staff involved in any of the data management activities to understand: <ul style="list-style-type: none"> – FW’s enterprise needs as a water utility – What data is maintained and how it is used – Current workflow for developing or acquiring data – How data are managed – Restrictions on sharing certain data outside the company – Desired data currently not being collected – Restrictions on sharing Personally identifiable information – Who the end-users are – Who the owners are 	<p>Analysis</p> <ul style="list-style-type: none"> • An internal report and a presentation deck describing: <ul style="list-style-type: none"> – Current state of FW’s data governance activities in comparison with best practices – Shortcomings of the current program and enumerate any risks associated with current practices – Data Flowcharts identifying owners and end-users

Item #	Task	Deliverables
DG. 2	<p>Design</p> <ul style="list-style-type: none"> • Propose data governance strategies consistent with the assessment of FW’s current practices from DG. 1. Strategies should reflect a holistic framework for how FW will collect and manage data including: <ul style="list-style-type: none"> – Standards – Processes – Documentation – Security • Specifically, this task should address <ul style="list-style-type: none"> – Strengths and weakness of current practices – Emerging trends, innovations, current trends among water utilities – Potential staffing, resources and tools needed to implement the proposed strategies 	<p>Design</p> <ul style="list-style-type: none"> • An internal report and a presentation deck describing <ul style="list-style-type: none"> – Proposed data governance strategies that FW can undertake – Operating procedures for sharing and processing data – Processes for naming and storing data – Methods for ensuring data are kept clean and usable – Roles and responsibilities for implementation
DG. 3	<p>Development</p> <ul style="list-style-type: none"> • Develop an implementation plan for the strategies delivered in Task DG. 2. • Develop a future state data architecture model for the implementation plan in DG. 2 • Define business and technical roles to support data governance framework. • Develop a holistic data governance framework that manages and protects data assets across the organization including: <ul style="list-style-type: none"> – Procedures and standards to ensure data accuracy, consistency, reliability and completeness. 	<p>Development</p> <ul style="list-style-type: none"> • An internal report and a presentation deck including: <ul style="list-style-type: none"> – Implementation plan for the recommended data governance framework. – Data architecture model for the recommended data governance framework. – Data dictionary for the recommended data governance framework. – Roles and Responsibilities for the data governance framework – Data security measures for the data governance framework – Data governance key performance indicators measuring data quality,

Item #	Task	Deliverables
	<ul style="list-style-type: none"> - Data integration and sharing across departments and their systems including water sensors to ensure the timely and accurate collection of data. - Data security measures to protect and track sensitive information. - Compliance with relevant department and industry standards and regulations. - Aligns with FW’s strategic objectives and is tailored to meet specific needs and challenges. 	<p>compliance, and regulatory, user adoption, engagement, and data governance maturity.</p> <ul style="list-style-type: none"> - Project plan required to effectively implement the framework across the organization. - Activities, timelines, milestones and deliverables associated with attaining each objective.
DG. 4	<p>Implementation</p> <ul style="list-style-type: none"> • Develop a change management approach that will help FW prepare for, execute, establish, and evaluate the success of the implementation plan delivered in Task DG.3 • Develop a training schedule that will train executives and staff in the data governance framework • Conduct a tiered series of rollout presentations to executives and staff • Hold implementation review sessions with designated staff • Implement framework. 	<p>Implementation</p> <ul style="list-style-type: none"> • Implementation of Framework • Data Governance Key Performance Indicators • Change Management • Training Material and Schedule

Item #	Task	Deliverables
DG.5	<p>Data Warehouse/Data Lake Design</p> <ul style="list-style-type: none"> • Evaluate current existing query and reporting licenses including SAP BTP, SAP BusinessObjects, SAP S/4HANA, MS PowerBI and other systems... • Assess the current business information products and tools and recommend improvements that align with organizational objectives. • Recommend a Data Warehouse/Data Lake Solution and show how it will support FW's Data Governance Strategy. • Enhance reporting and dashboard capabilities to provide real-time insights and data visualization that support informed decision-making. 	<p>Data Warehouse/Data Lake Design</p> <ul style="list-style-type: none"> • An internal report and a presentation deck including <ul style="list-style-type: none"> – Recommendations for Data Warehouse/Data Lake. – Recommendations for reporting tools for Data Warehouse/Data Lake. – Implementation plan for the Data Warehouse/Data Lake. – Implementation plan for Reporting Tools. – Project Plan required to effectively implement the Data Warehouse/Data Lake and Reporting Tools. – Activities, timelines, milestones, resources and deliverables associated with attaining each objective – Reporting and dashboarding recommendations
DG.6	<p>Data Warehouse/Data Lake Pilot</p> <ul style="list-style-type: none"> • Implement a Data Warehouse/Data Lake Pilot demonstrating how extraction, transformation, load and reporting will function for the recommended solution. 	<p>Data Warehouse/Data Lake Pilot</p> <ul style="list-style-type: none"> • Data Warehouse/Data Lake Solution Pilot including strategies for: <ul style="list-style-type: none"> - Extraction. - Transformation. - Load. - Reporting.
DG.7	<p>Implement Data Warehouse/Data Lake</p> <ul style="list-style-type: none"> • Implement Data Warehouse/Data Lake selected in DG.5 and DG. 6. • Implement Reporting Tools for Data Warehouse/Data Lake. • Develop and implement an Executive Dashboard. • Develop a change management approach that will help FW prepare for, carry out, establish, and evaluate 	<p>Implement Data Warehouse/Data Lake</p> <ul style="list-style-type: none"> • Implementation of a Data Warehouse/Data Lake. • Implementation of Reporting Tools. • Executive Dashboard. • Change Management. • Training Materials and Schedule. • Roles & Responsibilities for Technical and Business teams.

Item #	Task	Deliverables
	<p>the success of the implementation plan delivered in DG.5.</p> <ul style="list-style-type: none"> • Develop training material and schedule that will train executives and managers in the use of reporting tools for reporting and dashboarding. • Develop training material and schedule that will train technical staff in the maintenance of the Data Warehouse/Data Lake. • Develop roles and responsibilities for FW business and technical teams 	

2.3 AD-HOC TASKS

FW reserves the right to incorporate ad-hoc tasking provisions into the resulting Contract by entering into negotiations with those Offeror(s) selected to participate in contract negotiations.

III. INSTRUCTIONS TO OFFERORS

3.1. ADDITIONAL INFORMATION

All questions relating to this solicitation shall be submitted in writing to David J. Webb, C.P.M., Procurement Program Supervisor, in the Procurement Department via email to dwebb@fairfaxwater.org. For a question to be considered, the subject line of the email should state the following: **RFP 24-022 Questions**. Questions should be succinct and must include the submitter's name, title, company name, company address, and telephone number. Prior to the award of a contract resulting from this solicitation, offerors and prospective offerors are prohibited from contacting any FW staff other than those assigned to the Procurement Department.

RFP 24-022 – TENTATIVE SCHEDULE

RFP ISSUANCE	04/01/2024
QUESTION DEADLINE	04/10/2024@ PRIOR TO 5:00PM LOCAL PREVAILING TIME
ADDENDUM 1 ISSUANCE	04/16/2024
ADDENDUM 2 ISSUANCE	04/24/2024
PROPOSALS DUE	05/03/2024@ PRIOR TO 2:00PM LOCAL PREVAILING TIME
ORAL PRESENTATIONS	06/10 – 14/2024
NEGOTIATIONS	06/17 – 07/05/2024
AWARD	08/01/2024
CONTRACT COMMENCEMENT	TBD

If any questions or responses require revisions to this solicitation as it was originally published, such revisions will be by formal addendum only. If this solicitation includes a separate FW contact for technical information, offerors are cautioned that any written, electronic, or oral representations made by any FW representative or other person that appear to change materially any portion of the solicitation shall not be relied upon unless subsequently ratified by a written addendum to this solicitation issued by the Procurement Department.

3.2. TRADE SECRETS OR PROPRIETARY INFORMATION

Trade secrets or proprietary information that is submitted by an offeror in connection with a procurement transaction may be exempted from public disclosure under the Virginia Freedom of Information Act ("VFOIA"). However, the offeror must invoke the protection of this subsection prior to or upon submission of the data or other materials, and must identify clearly and in writing, on the Proposal Form, the data or other materials sought to be protected and state the reasons why protection is necessary or falls within the exceptions to the VFOIA. It is the offeror's sole responsibility to defend such exemptions if challenged in a court of competent jurisdiction.

3.3. DEBARMENT STATUS

The offeror shall indicate, in the space provided on the Proposal Form, whether or not it, or any of its principals, is/are currently debarred from submitting proposals to FW or any other state or political subdivision, and whether or not it is an agent of any person or entity that is currently debarred from submitting proposals to FW or any other state or political subdivision. An affirmative response may be considered grounds for rejection of the proposal.

3.4. CONFLICT OF INTEREST STATEMENT

The offeror must provide a statement regarding potential conflict of interest. The certification shall be in the form provided in this solicitation, signed by an authorized agent and principal of the offeror and notarized.

3.5. QUALIFICATION OF OFFERORS

Each offeror may be required, before the award of any contract, to show to the complete satisfaction of the Procurement Manager that it has the necessary facilities, ability, and financial resources to comply with the contract and furnish the service, material or goods specified herein in a satisfactory manner. Each offeror may also be required to provide past history and references which will enable the Procurement Manager to be satisfied as to the offeror's qualifications. Failure to qualify according to the foregoing requirements will justify rejection by FW of a proposal and its respective offeror.

3.6. OFFEROR INVESTIGATIONS

Before submitting a proposal, each offeror shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract and to verify any representations made by FW that the offeror will rely upon. No pleas of ignorance of such conditions and requirements resulting from failure to make such investigations and examinations will relieve the successful offeror from its obligation to comply in every detail with all provisions and requirements of the contract documents, or will be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the successful offeror.

3.7. COMPETITIVE NEGOTIATION FOR NON-PROFESSIONAL SERVICES

This solicitation is let under the Virginia Public Procurement Act (VPPA) procedure, "Competitive Negotiation for Goods and Services". Under this procedure, the content of the proposals, and the identity of the offerors are not public record until an award determination has been made. Because of this restriction, the opening of proposals is not public.

3.8. AUTHORITY TO TRANSACT BUSINESS

Any offeror organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, or as otherwise required by law. The proper and full legal name of the firm or entity and the identification number issued to the offeror by the Virginia State Corporation Commission must be written in the space provided on the Proposal Form. Any offeror that is not required to be authorized to transact business in the Commonwealth shall include in its proposal a statement describing why the offeror is not required to be so authorized. FW may require a firm to provide documentation prior to award which: 1) clearly identifies the complete name and legal form of the firm or entity (i.e. corporation, limited partnership, etc.), and 2) establishes that the firm or entity is authorized by the State Corporation Commission to transact business in Virginia. Failure of a prospective and/or successful offeror to provide such documentation shall be grounds for rejection of the proposal or cancellation of the award. For further information refer to the Commonwealth of Virginia State Corporation Commission website at: www.scc.virginia.gov.

3.9. INSURANCE REQUIREMENTS

Each offeror must review the insurance requirements section carefully with its insurance agent or broker prior to submitting a proposal to ensure they can provide the specific coverage requirements and limits applicable to this solicitation. If the offeror is not able to meet the insurance requirements of the solicitation, alternate insurance coverage satisfactory to FW may be proposed by the offeror and considered by FW. Written requests for consideration of alternate coverage must be received by the FW Procurement Manager at least ten (10) calendar days prior to the date set for receipt of proposals. If FW denies the request for alternate coverage, the coverage required by the Insurance Requirements section must be provided. If FW permits alternate coverage, an addendum to the Insurance Checklist will be issued prior to the time and date set for receipt of proposals.

3.10. INTEREST IN MORE THAN ONE PROPOSAL, AND COLLUSION

More than one proposal received in response to this solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected. Reasonable grounds for believing that an offeror is interested in more than one (1) proposal for a solicitation both as an offeror and as a subcontractor for another offeror, will result in rejection of all proposals in which the offeror is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two (2) or more offerors submitting a proposal for the work. Any or all proposals may be rejected if reasonable grounds exist for believing that collusion exists among any offerors. Offerors rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.

3.11. PROPOSAL WITHDRAWAL

No proposal may be withdrawn after it is filed unless the offeror makes a request in writing to the FW Procurement Manager prior to the time and date set for the receipt of proposals or unless FW fails to award or issue a notice of intent to award a contract within one hundred and twenty (120) days after the date and time set for receipt of proposals.

3.12. OPTIONAL RIDER CLAUSE

Subject to the mutual agreement between the parties, any contract awarded on the basis of this solicitation may be used by any public entity (to include jurisdictions comprising the Metropolitan Washington Council of Governments), to enter into a contract for the services described and defined herein. For single purchases, the contract may be used for up to 12 months from the actual date of contract award. For multi-year contracts, the contract may be used throughout the effective period of the contract. Contracts awarded as a result of this solicitation will be subject to these terms and conditions, and/or such terms and conditions as may be required by the controlling body for the public agency using the contract. Pricing shall be as offered by the successful offeror and subsequently accepted by FW.

3.13. CONTRACT AWARD IS IN THE BEST INTEREST

FW reserves the right to accept or reject proposals, to waive any informalities or irregularities therein and to contract as the best interests of FW may require in order to obtain the goods and/or services that best meet the needs of FW, as described in this RFP. Selection of a proposal does not mean that all aspects of the proposal are acceptable to FW. FW reserves the right to negotiate the modification of terms and conditions with the offeror offering the best value to FW in conjunction with the evaluation criteria contained herein prior to the execution of a contract, to ensure a satisfactory contract.

3.14. NOTICE OF DECISION TO AWARD

FW will post a written Notice of Decision to Award on our public website, stating the date the decision to award was made, and identifying the name(s) of the awardee(s).

IV. PROPOSAL REQUIREMENTS

4.1. GENERAL

Proposals must be submitted in hard copy and must be fully executed. FAILURE TO SUBMIT A PROPOSAL WITH A FULLY-COMPLETED PROPOSAL FORM USING THE PROPOSAL FORM PROVIDED IN THIS SOLICITATION MAY BE CAUSE FOR REJECTION OF THE PROPOSAL. The Proposal Form must be signed by a person authorized to legally bind the offeror.

Offerors must include an original longhand signature in at least one of the proposals submitted and shall clearly mark on the face of that proposal the word "ORIGINAL". The additional copies required herein may include photocopies of the original Proposal Form.

Modification of or additions to any portion or terms of the solicitation may be cause for rejection of the proposal; however, FW reserves the right to decide, on a case-by-case basis, in its sole discretion, whether or not to reject such a proposal as nonresponsive.

Proposals not submitted in the number of copies requested are subject to immediate rejection. Proposals submitted by facsimile or electronically will NOT be accepted.

Proposals and all documents related to this solicitation submitted to FW by an offeror or a prospective offeror shall, upon receipt by FW, become the property of FW.

The offeror's proposal shall address the required information identified under the Proposal Submittal Elements section below, in the order listed, and shall not exceed the stated page limitations, if any. The proposal shall be limited to a page size of 8 ½" x 11", single space and type size shall not be less than 10 point font for each response item. Note: for page-counting purposes, a page equals a one-sided sheet. If a page limit is not noted within the section below there is no page limit.

4.2. EXPENSES INCURRED IN PREPARING PROPOSAL

FW accepts no responsibility for any expense incurred by any offeror in the preparation and presentation of a proposal. All expenses related to an offer are the sole responsibility of the offeror.

4.3. PROPOSAL FORM SUBMISSION

The required Proposal Form is provided with this solicitation. One (1) proposal with a Proposal Form containing an original longhand signature, and nine (9) additional copies, each including a photocopy of the original signed Proposal Form (ten (10) copies total), and an electronic copy of the proposal on a SharePoint site which can be accessed by FW, shall be submitted by hand in a sealed envelope no later than the time and date deadline specified in this solicitation to:

Fairfax Water
Procurement Department
8570 Executive Park Avenue
Fairfax, Virginia 22031

Timely submission of the proposal is solely the responsibility of the offeror. Proposals received after the specified date and time will be rejected. The exterior of the envelope or package shall indicate the name of the offeror, the scheduled proposal submission date and time, and the number of the solicitation. The time and date of receipt shall be indicated on the envelope or package by FW.

4.4. INCOMPLETE DOCUMENTS

Each offeror is responsible for having determined the accuracy and/or completeness of the solicitation documents upon which it relied in making its proposal, and has an affirmative obligation to notify FW Procurement Manager immediately upon discovery of an apparent or suspected inaccuracy, error in, or omission of any pages, drawings, sections, or addenda whose omission from the documents was apparent from a reference or page numbering or other indication in the solicitation documents.

If a potential offeror downloaded an electronic version of the solicitation documents, that potential offeror is responsible for determining the accuracy and/or completeness of the electronic documents.

If the successful offeror proceeds with any activity that may be affected by an inaccuracy, error in, or omission in the solicitation documents of which it is aware but has not notified FW Procurement Manager, the offeror hereby agrees to perform any work described in such missing or incomplete documents at the offeror's sole expense and at no additional cost to FW.

4.5. PROPOSAL STANDARDS

Proposal submitted in response to this solicitation shall meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors and shall be submitted in a format outlined herein. Whenever possible, proposals submitted in response to this solicitation shall comply with the following guidelines:

- All copies should be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;
- Covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of pages (proposals with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided;
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided; and
- Numbered tabs and dividers are required for each of the sections listed and in the order below:
 - **TAB 1** - PROPOSAL FORM
 - **TAB 2** - EXECUTIVE SUMMARY
 - **TAB 3** - SOLUTION EXPERIENCE
 - **TAB 4** - PRICING
 - **TAB 5** - REFERENCES
 - **TAB 6** - FINANCIAL STABILITY
 - **TAB 7** - PROPOSED APPROACH
 - **TAB 8** - EXCEPTIONS TO NON-MANDATORY CONTRACT TERMS AND CONDITIONS

4.6. PROPOSAL SUBMITAL ELEMENTS

4.6.1. TAB 1 – Proposal Form

Attachment A – Proposal Form must be fully completed and submitted in Tab I or the proposal could be deemed non-responsive. Attachment A also includes the Proprietary / Trade Secret Statement and Insurance Checklist., **Attachment J – Document Security License and Non-Disclosure Agreement, Attachment K – Business Associate Agreement, and Attachment L – Conflict-of-Interest Statement** must also be completed and submitted in Tab 1.

4.6.2. TAB 2 - Executive Summary

The offeror’s proposal shall contain an executive summary that summarizes why their firm is the most qualified for this scope of work, anticipated challenges, and innovative approaches, and opportunities for cost savings.

4.6.3. TAB 3 - Solution Experience

Offerors shall provide information describing its experience, capabilities and other qualifications for this project. The offeror shall restate each question or information request verbatim from this solicitation and include a response. A response is required for each item.

Experience and Competency (EC)	
Item #	Description
EC.1	<p>A Completed Attachment B Must be <u>Included in Tab 3 of Proposal</u></p> <p>Attachment B – Experience and Competency A Completed Attachment B Must be <u>Included in Tab 3 of Proposal</u></p> <p>Attachment B – Experience and Competency must be fully completed. Provide information about the offeror’s experience and competency with delivering multi-phased projects as it relates to the proposed Solution in the RFP, including:</p> <ul style="list-style-type: none"> • Number of continuous and recent years supporting or executing similar solutions (minimum of 3 years) • List client and project name of similar or larger recently completed projects executed (minimum of 3)
EC.2	Describe offeror’s experience working within the water or wastewater industry, other utilities, or other similar business environments or scenarios.
EC.3	Attachment D – Third Party Software or Services must be fully completed.
EC. 4	Attachment D – Third Party Software or Services must be fully completed.
EC. 5	Attachment D – Third Party Software or Services must be fully completed.

4.6.4. TAB 4 - Pricing

Attachment F – Pricing Workbook must be submitted in paper copy and followed up by an email electronic copy. In addition offeror shall provide any assumptions that would help FW to

understand the cost proposal. **Attachment H – Milestone Payment Plan** must be completed and submitted in Tab 4. **All information concerning pricing should only be included in Tab 4**

4.6.5. TAB 5 - References

FW will select past clients based on the information provided by the offeror in Solution Experience and perform reference checks. No additional information needs to be submitted by offerors in this section.

4.6.6. TAB 6 - Financial Stability

The offeror shall provide a letter from an independent auditor attesting to the financial stability of the offeror. NOTE: review of financial stability will not be performed during the evaluation of written proposal and is therefore not part of the evaluation criteria for review of written proposals. Additional information may be requested by FW related to the Financial Stability of the offeror.

4.6.7. TAB 7 - Proposed Approach

The offeror shall describe in detail how they propose to implement the Data Governance, Warehousing, Analytics, Strategy, and Implementation deliverables as described in section [2.2 SCOPE OF RESPONSIBILITIES](#).

4.6.8. TAB 8 - Exceptions to Non-Mandatory Contract Terms and Conditions

The offeror is to provide any exceptions to any non-mandatory provision of the contract documents and/or any industry standard documents it requests to have included in the resulting contract. The offeror shall be deemed to have waived all objections to, and accepted, all provisions of the contract documents to which no exception is included in its submitted proposal and in such event no exceptions or industry standard documents shall be considered during contract negotiations.

V. EVALUATION PROCESS

Fairfax Water (hereinafter “FW”) is soliciting proposals from offerors having experience and qualifications in the area identified in this solicitation. Each proposal must contain evidence of the offeror's experience and abilities in the specified area and other disciplines directly related to the proposed work. Other information required by FW may include the submission of profiles and resumes of the staff to be assigned to the project, references, illustrative examples of similar work performed, and other information that will clearly demonstrate the offeror's expertise in the area of the services sought by this solicitation. Offerors are encouraged to elaborate on their qualifications and performance data or staff expertise, as well as provide alternative concepts. An Evaluation Committee will review and evaluate all written proposals and identify firms that may be invited to submit more detailed proposals, conduct oral presentations, and/or provide product or service demonstrations. The evaluation of written proposals will be based on the evaluation criteria identified elsewhere in this solicitation. The Evaluation Committee will rely upon the information provided in the written proposals submitted in order to select finalists. Subsequent stages of the process to select firms for negotiations may include, but are not limited to, review of more detailed proposals, oral presentations, or demonstrations. If such subsequent stages are conducted, they will be evaluated based on the same evaluation criteria used to evaluate written proposals, as relevant to the areas being evaluated. FW may consider site visits for those firms selected to participate in contract negotiations. FW may award a contract or initiate negotiations with one or more offerors without further contact with any other offerors.

A Completed Attachment A Must be Included in Tab 1 of Proposal

VI. RFP ATTACHMENTS

**FAIRFAX COUNTY WATER AUTHORITY
REQUEST FOR PROPOSALS NO. 24-022**

Attachment A – Proposal 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: http://www.fairfaxwater.org/procurement/current_bids.htm.

POTENTIAL OFFERORS 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.

I. ALL MATERIAL (PROPOSAL AND ATTACHMENTS) SUBMITTED SHALL BE IN TEN (10) COPIES, CONSISTING OF: ONE PROPOSAL, CLEARLY MARKED ON ITS COVER WITH THE WORD “ORIGINAL”, WHICH SHALL INCLUDE THIS PROPOSAL FORM CONTAINING AN ORIGINAL LONGHAND SIGNATURE; AND NINE (9) ADDITIONAL COPIES, WHICH SHALL INCLUDE A PHOTOCOPY OF THE ORIGINAL SIGNED PROPOSAL FORM AND A ELECTRONIC COPY OF THE PROPOSAL ON SHAREPOINT SITE ACCESSABLE BY FW. THE ORIGINAL, SIGNED PROPOSAL FORM SHALL BE THE FIRST PAGE OF THE ORIGINAL PROPOSAL.

2. INDICATE THE NAME AND CONTACT INFORMATION OF THE PERSON WHO CAN RESPOND AUTHORITATIVELY TO ANY QUESTIONS REGARDING THIS PROPOSAL (PROJECT MANAGER).

NAME (PRINTED): _____ TITLE: _____

E-MAIL ADDRESS: _____ TEL. NO.: _____

TRADE SECRETS OR PROPRIETARY INFORMATION:

Trade secrets or proprietary information submitted by an offeror 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 offeror 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 proposal I have submitted does not contain any trade secrets and/or proprietary information.

() Yes, the proposal I have submitted does contain trade secrets and/or proprietary information.

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

PROPOSAL FORM, PAGE _____ OF _____

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

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 proposal will be open for public inspection consistent with applicable law.

CERTIFICATION OF NON-COLLUSION: The undersigned certifies that this proposal 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 PROPOSAL MUST BE WRITTEN IN THE SPACE PROVIDED BELOW. THIS PROPOSAL FORM, AND ALL OTHER DOCUMENTS REQUIRED BY THE SOLICITATION TO BE SUBMITTED WITH THIS PROPOSAL FORM, INCLUDING, BUT NOT LIMITED TO ALL ISSUED ADDENDUMS, MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BELOW BY A PERSON AUTHORIZED TO LEGALLY AND CONTRACTUALLY BIND THE OFFEROR, OR THE PROPOSAL 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 OFFEROR EXEMPT FROM SCC AUTHORIZATION REQUIREMENT SHALL INCLUDE A STATEMENT WITH ITS PROPOSAL WHY THEY ARE NOT REQUIRED TO BE SO AUTHORIZED			
IS YOUR FIRM OR ANY OF ITS PRINCIPALS CURRENTLY DEBARRED FROM SUBMITTING PROPOSALS TO FAIRFAX WATER AUTHORITY, OR ANY OTHER STATE OR POLITICAL SUBDIVISION IN THE COMMONWEALTH OF VIRGINIA?			
OFFEROR STATUS:	MINORITY OWNED:	WOMAN OWNED:	NEITHER:

PROPOSAL FORM, PAGE _____ OF

INSURANCE CHECKLIST

CERTIFICATE OF INSURANCE MUST SHOW ALL COVERAGE AND ENDORSEMENTS INDICATED BY "X"

COVERAGES REQUIRED		LIMITS (FIGURES DENOTE MINIMUMS)
X	1	WORKERS' COMPENSATION STATUTORY LIMITS OF VIRGINIA
X	2	EMPLOYER'S LIABILITY \$100,000 ACCIDENT, \$100,000 DISEASE, \$500,000 DISEASE POLICY LIMIT
X	3	COMMERCIAL GENERAL LIABILITY(CGL) \$1,000,000 CSL BI/PD EACH OCCURRENCE, \$2 MILLION ANNUAL AGGREGATE
X	4	PREMISES/OPERATIONS \$500,000 CSL BI/PD EACH OCCURRENCE MILLION ANNUAL AGGREGATE
X	5	AUTOMOBILE LIABILITY \$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
X	6	OWNED/HIRED/NON-OWNED VEHICLES \$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
X	7	INDEPENDENT CONTRACTORS \$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
	8	PRODUCTS LIABILITY \$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	9	COMPLETED OPERATIONS \$500,000 CSL BI/PD EACH OCCURRENCE, \$1 MILLION ANNUAL AGGREGATE
X	10	CONTRACTUAL LIABILITY (MUST BE SHOWN ON CERTIFICATE) \$500,000 CSL BI/PD EACH OCCURRENCE
	11	PERSONAL AND ADVERTISING INJURY LIABILITY \$1 MILLION EA. OFFENSE, \$1 MILLION ANNUAL AGGREGATE
	12	UMBRELLA LIABILITY \$1 MILLION BODILY INJURY, PROPERTY DAMAGE AND PERSONAL INJURY
	13	PER PROJECT AGGREGATE \$1 MILLION PER OCCURRENCE/CLAIM
	14	PROFESSIONAL LIABILITY
	A	ARCHITECTS AND ENGINEERS \$1 MILLION PER OCCURRENCE/CLAIM
	B	ASBESTOS REMOVAL LIABILITY \$2 MILLION PER OCCURRENCE/CLAIM
	C	MEDICAL MALPRACTICE \$1 MILLION PER OCCURRENCE/CLAIM
	D	MEDICAL PROFESSIONAL LIABILITY \$1 MILLION PER OCCURRENCE/CLAIM
	15	MISCELLANEOUS E&O \$1 MILLION PER OCCURRENCE/CLAIM
	16	MOTOR CARRIER ACT END. (MCS-90) \$1 MILLION BI/PD EACH ACCIDENT, UNINSURED MOTORIST
	17	MOTOR CARGO INSURANCE
	18	GARAGE LIABILITY \$1 MILLION BODILY INJURY, PROPERTY DAMAGE PER OCCURRENCE
	19	GARAGE KEEPERS LIABILITY \$500,000 COMPREHENSIVE, \$500,000 COLLISION
	20	INLAND MARINE-BAILLIE'S INSURANCE \$
	21	MOVING AND RIGGING FLOATER ENDORSEMENT TO CGL
	22	DISHONESTY BOND \$
	23	BUILDER'S RISK PROVIDE COVERAGE IN THE FULL AMOUNT OF CONTRACT
X	24	XCU COVERAGE ENDORSEMENT TO CGL
	25	USL&H FEDERAL STATUTORY LIMITS
X	26	CARRIER RATING SHALL BE BEST'S RATING OF A-VII OR BETTER OR ITS EQUIVALENT
X	27	NOTICE OF CANCELLATION, NONRENEWAL OR MATERIAL CHANGE IN COVERAGE SHALL BE PROVIDED TO FAIRFAX WATER AT LEAST 30 DAYS PRIOR TO ACTION
X	28	THE FAIRFAX WATER SHALL BE AN ADDITIONAL INSURED ON ALL POLICIES EXCEPT WORKERS COMPENSATION, PROFESSIONAL LIABILITY, AND AUTOMOBILE LIABILITY
X	29	CERTIFICATE OF INSURANCE SHALL SHOW SOLICITATION NUMBER AND TITLE

INSURANCE AGENT'S STATEMENT:

I have reviewed the above requirements with the offeror named below and have advised the offeror of required coverages not provided through this agency.

AGENCY NAME: _____ AUTH. SIGNATURE: _____

OFFEROR'S STATEMENT:

If awarded the Contract, I will comply with contract insurance requirements.

OFFEROR NAME: _____ AUTH. SIGNATURE: _____

PROPOSAL FORM, PAGE _____ OF _____

A Completed Attachment B Must be Included in Tab 3 of Proposal

Attachment B – Experience and Competency

Complete as appropriate to offeror’s experience and current state the fields in white.

Experience and Competency			
Years Supporting Similar or Larger Solution			
List client and project name of similar or larger recently completed projects executed (minimum of 3)	#	Client Name	Project Name
	1		
	2		
	3		
	4		
	5		
SAP Partner Standing			
SAP Partner Level			
SAP Partner Recognitions/Awards			

A Completed Attachment C Must be Included in Tab 3 of Proposal

Attachment C – Detailed Solution Experience

Complete the following form for the 3 clients listed in Attachment B that had a recent similar or larger Solution experiences.

Detailed Solution Experience	
Client Name	
Project Name	
Point-of-Contact (POC) Name	
POC Role (preferably the Contract Project Manager)	
POC Email Address	
POC Phone Number	
Stakeholder Size & Diversity	
Estimated Duration of Project	
Summary of Solution, including complexity of landscape	
Describe any challenges and how you resolved the	<ul style="list-style-type: none"> • <Challenge> <ul style="list-style-type: none"> ○ <Resolution>

A Completed Attachment D Must be Included in Tab 3 of Proposal

Attachment D – Third Party Software or Services

Complete as appropriate the following form for each 3rd party software or service proposed by the offeror to complete the Solution.

3rd Party Software or Services	
Company Name	
Software or Service	
Description of Purpose in Solution	

A Completed Attachment E Must be Included in Tab 3 of Proposal

Attachment E – Project Team Staff

Provide a list of project team staff proposed to implement the Solution

Project Team Staff	
Role	
Years of experience in Role	
Description of Role	
Percentage of Time Allocated and Dedicated to Project	

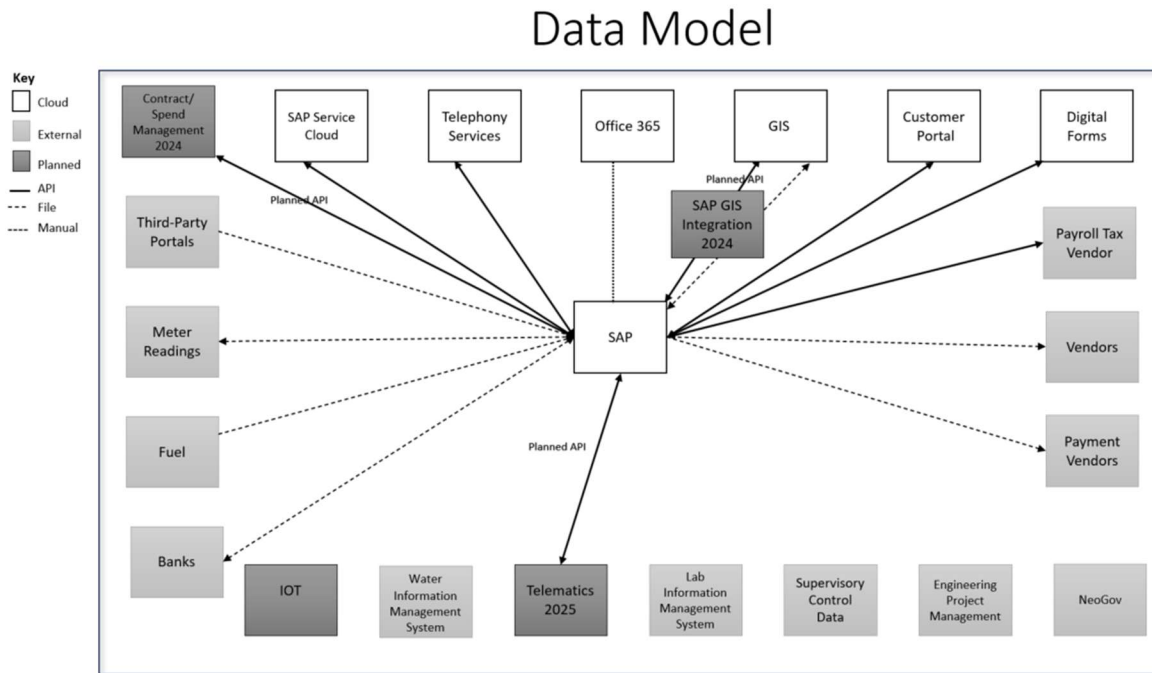
A Completed Attachment F Must be Included in Tab 4 of Proposal

Attachment F – Pricing Workbook

The Pricing Workbook is made up of four worksheets and is included as a separate Excel Attachment F – Pricing Workbook. .

Attachment G is Provided For Information Purposes Only

Attachment G – Data Model



A Completed Appendix H Must be Included in Tab 4 of Proposal

Attachment H– Milestone Payment Plan

The objective is to establish that the offeror has a clear understanding of the level of effort required to complete each DG Item and of the duration of the Solution.

Offerors are to provide a Deliverable Date and Milestone Payment for each DG Item. The Total should mirror the Total in the Pricing Workbook.

Item #	Deliverable	Deliverable Date	Milestone Payment \$
DG.1	<p>Analysis An internal report and a presentation deck</p> <p>As Per Project Scope of Services DG. 1</p>		
DG.2	<p>Design An internal report and a presentation deck</p> <p>As Per Project Scope of Services DG. 2</p>		
DG.3	<p>Development An internal report and a presentation deck</p> <p>As Per Project Scope of Services DG. 3</p>		
DG.4	<p>Implementation</p> <ul style="list-style-type: none"> • Implementation of Framework • Data Governance Key Performance Indicators • Change Management • Training Material and Schedule <p>As Per Project Scope of Services DG. 4</p>		
DG.5	<p>Data Warehouse/Data Lake Design</p> <p>An internal report and a presentation deck</p> <p>As Per Project Scope of Services DG. 5</p>		

<p>DG. 6</p>	<p>Data Warehouse/Data Lake Pilot</p> <p>Data Warehouse/Data Lake Solution Pilot including strategies</p> <p>As Per Project Scope of Services DG. 6</p>		
<p>DG 7</p>	<p>Implement Data Warehouse/Data Lake</p> <ul style="list-style-type: none"> • Implementation of a Data Warehouse/Data Lake. • Implementation of Reporting Tools. • Executive Dashboard. • Change Management. • Training Materials and Schedule. • Roles & Responsibilities for Technical and Business teams. <p>As Per Project Scope of Services DG. 7</p>		
	<p>Total</p>		

Each deliverable will be delivered to the Fairfax Water point of contact for the project, Mr. Bao Nguyen, Acting Director Technology, at bnguyen@fairfaxwater.org, with a Deliverable Acceptance Receipt. The receipt will describe the deliverable and provide Mr. Bao with space to indicate if the deliverable is accepted, rejected, or conditionally accepted. Conditionally accepted deliverables will contain a list of deficiencies that need to be corrected in order for the deliverable to be accepted by Fairfax Water.

Attachment I is Provided for Informational Purposes Only

Attachment I – Draft Agreement

THE FOLLOWING IS THE AGREEMENT THAT WILL BE ENTERED INTO BETWEEN FAIRFAX WATER (“FW”) AND THE SUCCESSFUL OFFEROR (“CONTRACTOR”), WITH INCOMPLETE INFORMATION TO BE ADDED BASED UPON THE FINAL NEGOTIATIONS BETWEEN FW AND THE SUCCESSFUL OFFEROR. OFFERORS WHO PROPOSE TO USE ADDITIONAL OR MODIFIED LANGUAGE MUST INCLUDE SUCH LANGUAGE WITH THEIR PROPOSAL OR THEY WILL NOT SUBSEQUENTLY BE CONSIDERED. NON-NEGOTIABLE, MANDATORY PROVISIONS REQUIRED BY VIRGINIA LAW ARE INDICATED BY AN ASTERISK (“”).*

**FAIRFAX COUNTY WATER AUTHORITY
PROCUREMENT DEPARTMENT
8570 EXECUTIVE PARK AVENUE
FAIRFAX, VA 22031**

AGREEMENT NO.

THIS AGREEMENT is made and entered into by and between Fairfax County Water Authority (“FW”) and _____ (“Contractor”) a [Insert Name of State] [Corporation, General Partnership, Limited Liability Company, etc.] authorized to do business in the Commonwealth of Virginia, and is effective as of the date executed by FW.

FW and the Contractor, for good and valuable consideration, the receipt and sufficiency of which is acknowledged hereby, hereby agree as follows:

1. CONTRACT DOCUMENTS

The Contract Documents consist of:

This Agreement,
Exhibit A – Scope of Work,
Exhibit B – Pricing,
Exhibit C – Non-Disclosure Agreement
Exhibit D – Milestone Payment Plan
The Request for Proposal (RFP) & Subsequent Addenda
Exhibit E – Business Associate Agreement
Exhibit F – Certificate of Insurance

Collectively, “Contract Documents”.

The following is incorporated by reference:
The Proposal Response from the Contractor

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement shall prevail over the other Contract Documents and the remaining Contract Documents shall be complementary to each other and if there are any conflicts the most stringent terms or provisions shall prevail.

The Contract Documents set forth the entire agreement between FW and the Contractor. FW and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents. The Contract Documents may be referred to herein below as the "Contract" or the "Agreement."

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (hereinafter "the Work"). The primary purpose of the Work is to provide Data Governance, Warehousing, Analytics, Strategy, and Implementation services. The Contract Documents set forth the minimum work estimated by FW and the Contractor to be necessary to complete the Work. It shall be the Contractor's responsibility, at the Contractor's sole cost and expense, to provide the specific services set forth in the Contract Documents and all other services reasonably necessary in order to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor's responsibility to manage the details and execution of the Work further defined in Exhibit A.

3. CONTRACT TERM

TO BE NEGOTIATED: The term of this Agreement shall commence upon the date of execution of the Agreement by FW and, unless terminated earlier in accordance herewith, shall be completed no later than INSERT END DATE/DAYS, thereafter, (such period, subject to any modifications as provided for in the Contract Documents, referred to herein as the "Contract Term"). No Work shall be deemed complete until it is accepted by the "Project Officer" (as defined in paragraph 7 below).

4. CONTRACT AMOUNT

TO BE NEGOTIATED: FW will pay the Contractor in accordance with the terms of the Payment paragraph below, and Exhibit B – Pricing for the Contractor's completion of the Work described and required in the Contract Documents. The Contractor agrees that it shall complete the Work for the total amount specified on Exhibit B (such amount, subject to modification in accordance with this Agreement, referred to herein as the "Contract Amount").

5. CONTRACT EXTENSION WITH PRICE ADJUSTMENTS NEGOTIATED UP TO CPI-U/PPI/ECI

TO BE NEGOTIATED: The Contract unit price(s) shall remain firm until DATE ("Price Adjustment Date"). To request a price adjustment, the Contractor or FW must submit a written request to the other party not less than 60 days prior to the Price Adjustment Date. Requests for adjustment(s) to unit price(s) shall not exceed the percentage of escalation / de-escalation in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the twelve (12) month period ending on the _____ of each year of the Contract.

If the Contractor and FW do not agree on the requested adjustment using the procedure set forth above, by the thirtieth (30th) calendar day prior to the Price Adjustment Date, FW may in its sole discretion terminate the Contract. Any contract unit price(s) that changed as a result of this procedure shall become effective the day after the Price Adjustment Date and shall be binding on both parties for 12 months following the adjustment which shall be considered the new Price Adjustment Date.

6. PAYMENT

The Contractor will be paid monthly upon its submission of a completed written invoice, satisfactory to the Project Officer, that meets the requirements of this section and other applicable provisions of the Contract. Within ten (10) days after the last day of each month the Contractor shall submit, for approval by the Project Officer, an invoice describing the total work done, by Task, during the preceding month. The Project Officer shall either approve the invoice or require corrections. FW will pay the Contractor within thirty (30) days after the date of receipt

of a correct (as determined by the Project Officer) invoice approved by the Project Officer. The amount paid shall be based on the estimate of the percentage of the total work under each Task completed during the month, subject to the Project Officer's acceptance of the Work and the estimate. If the Contractor has been paid ninety percent (90%) of the Contract Amount for any Task and work under that Task is not complete, the remaining amount due for that Task will be paid to the Contractor only after all Work on that Task is completed. The total amount paid for each Task shall not exceed the amount allocated for the Task, regardless of the number of hours spent or the amount of expenses incurred by the Contractor in the performance of the Work. The number of FW's Purchase Order pursuant to which shipments have been made or services performed shall appear on all invoices. Invoices shall be submitted in duplicate.

7. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of FW's Project Officer ("Project Officer") who shall be appointed by the Division Director of FW's Division or Department requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work pursuant to the Contract Documents.

8. ADJUSTMENTS FOR CHANGE IN SCOPE

FW may order changes in the Work within the general scope of the Work consisting of additions, deletions or other revisions. No claim may be made by the Contractor that the scope of the work or that the Contractor's services have been changed requiring adjustments to the amount of compensation due the Contractor unless such adjustments have been made by a written amendment to the Contract signed by FW and the Contractor and providing an agreed amount of compensation due. If the Contractor believes that any particular work is not within the scope of the Work or is a material change or otherwise will call for more compensation to the Contractor, the Contractor must immediately notify the Project Officer after the change or event occurs and within ten (10) calendar days thereafter must provide written notice to the Project Officer. The Contractor's notice must provide to the Project Officer the amount of additional compensation claimed, together with the basis therefor and documentation supporting the claimed amount. The Contractor will not be compensated for performing any work unless a proposal complying with this paragraph has been submitted in the time specified above and a written Contract amendment has been signed by FW and the Contractor and a FW purchase order is issued covering the cost of the services to be provided pursuant to the amendment.

9. ADDITIONAL SERVICES

The Contractor shall not be compensated for any goods or services provided except those included in Exhibit A and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by FW and the Contractor, and a Purchase Order is issued by FW covering the expected cost of such services.

Additional services agreed upon by the parties will be billed at the rates set forth in Exhibit B unless otherwise agreed by the parties in writing.

10. REIMBURSABLE EXPENSES

TO BE NEGOTIATED: No expenses except those identified on Exhibit B of this Contract as project-related expenses will be reimbursed if incurred without the prior written approval of FW and the issuance of a FW purchase order detailing the specific expenses to be incurred by the Contractor and their estimated amount. Payment for approved reimbursable expenses will be made within thirty (30) days after receipt by the Project Officer of a correct invoice identifying the nature of the expense. Reimbursable expenses allowed shall be charged to FW on a unit price basis at the Contractor's cost. All amounts paid for reimbursable expenses shall be considered part of the Contract Amount.

The total amount paid for project related expenses shall not exceed the amount shown in Exhibit B.

11. *PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven (7) days after receipt of amounts paid to the Contractor by FW for work performed by any subcontractor under this Contract:

- a) Pay the subcontractor for the proportionate share of the total payment received from FW attributable to the Work performed by the subcontractor under this Contract; or
- b) Notify FW and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven (7) days following receipt by the Contractor of payment from FW for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include in each of its subcontracts, if any are permitted, 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.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of FW. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

12. *NON-APPROPRIATION

All funds for payments by FW to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by FW. In the event of non-appropriation of funds by FW for the goods or services provided under this Contract or substitutes for such goods or services which are as advanced or more advanced in their technology, FW will terminate the Contract, without termination charge or other liability to FW, on the last day of the then current calendar year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first. If funds are not appropriated at any time for the continuation of this Contract, cancellation will be accepted by the Contractor on thirty (30) days prior written notice, but failure to give such notice shall be of no effect and FW shall not be obligated under this Contract beyond the date of termination specified in FW's written notice.

13. FAIRFAX WATER PURCHASE ORDER REQUIREMENT

FW purchases are authorized only if a FW Purchase Order is issued in advance of the transaction, indicating that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. FW will not be liable

for payment for any purchases made by its employees without appropriate purchase authorization issued by FW's Procurement Manager. If the Contractor provides goods or services without a signed FW Purchase Order, it does so at its own risk and expense.

14. PROJECT STAFF

FW will, throughout the Contract Term, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If FW reasonably rejects staff or subcontractors pursuant to this section, the Contractor must provide replacement staff or subcontractors satisfactory to FW in a timely manner and at no additional cost to FW. The day-to-day supervision and control of the Contractor's employees, and employees of any of its subcontractors, shall be the sole responsibility of the Contractor.

15. BACKGROUND CHECK

Any Contractor employee or subcontractor assigned by the Contractor to work under this Agreement at FW's site or remotely as determined by the FW Project officer, may be subject to a FW standard background check, including a credit check. Permission to work onsite or remotely shall be contingent on an outcome of the background check that is acceptable to FW. Prior to commencing Work related to this Agreement, such employee or subcontractor may be required to sign documents provided by FW.

16. SUPERVISION BY CONTRACTOR

The Contractor shall at all times enforce strict discipline and good order among the workers performing under this Contract, and shall not employ on the work any person not reasonably proficient in the work assigned.

17. *EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of this Contract, the Contractor agrees as follows:

- a) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an Equal Opportunity Employer.
- c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- d) The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.

- e) The Contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

18. *EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, 1950, as amended, the Contractor acknowledges that it does not, and shall not during the performance of this Contract for goods and/or services in the Commonwealth, knowingly employ an unauthorized alien as that term is defined in the federal Immigration Reform and Control Act of 1986.

19. *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.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor by FW in accordance with the Virginia Public Procurement Act, the employees of which Contractor are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

20. TERMINATION FOR BREACH BY THE CONTRACTOR

The Contract shall remain in force for the Contract Term and until FW determines that all of the following requirements and conditions have been satisfactorily met: FW has accepted the Work, and thereafter until the Contractor has met all requirements and conditions relating to the Work under the Contract Documents, including warranty and guarantee periods. However, FW shall have the right to terminate this Contract sooner if the Contractor is in breach or default or has failed to perform satisfactorily the Work required, as determined by FW in its discretion.

If FW determines that the Contractor has failed to perform satisfactorily, then FW will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor, allocable to the Contract and accepted by FW prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation,

must be submitted to the FW Project Officer within fifteen (15) days after the expiration of the Cure Period. FW may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

If FW terminates the Contract for default or breach of any Contract provision or condition, then the termination shall be immediate after notice from FW to the Contractor (unless FW in its discretion provides for an opportunity to cure) and the Contractor shall not be permitted to seek Termination Costs.

Upon any termination pursuant to this section, the Contractor shall be liable to FW for all costs incurred by FW after the effective date of termination, including costs required to be expended by FW to complete the Work covered by the Contract, including costs of delay in completing the Work or the cost of repairing or correcting any unsatisfactory or non-compliant work performed or provided by the Contractor or its subcontractors. Such costs shall be either deducted from any amount due the Contractor or shall be promptly paid by the Contractor to FW upon demand by FW. Additionally, and notwithstanding any provision in this Contract to the contrary, the Contractor is liable to FW, and FW shall be entitled to recover, all damages to which FW is entitled by this Contract or by law, including, and without limitation, direct damages, indirect damages, consequential damages, delay damages, replacement costs, refund of all sums paid by FW to the Contractor under the Contract and all attorney fees and costs incurred by FW to enforce any provision of this Contract.

Except as otherwise directed by FW in the notice, the Contractor shall stop work on the date of receipt of notice of the termination or other date specified in the notice, place no further orders or subcontracts for materials, services, or facilities except as are necessary for the completion of such portion of the Work not terminated, and terminate all vendors and subcontracts and settle all outstanding liabilities and claims. Any purchases after the date of termination contained in the notice shall be the sole responsibility of the Contractor.

In the event any termination for cause, default, or breach shall be found to be improper or invalid by any court of competent jurisdiction then such termination shall be deemed to have been a termination for convenience.

21. TERMINATION FOR THE CONVENIENCE OF FAIRFAX WATER

The performance of work under this Contract may be terminated by the FW Procurement Manager in whole or in part whenever the Procurement Manager shall determine that such termination is in FW's best interest. Any such termination shall be effected by the delivery to the Contractor of a written notice of termination at least fifteen (15) days before the date of termination, specifying the extent to which performance of the work under this Contract is terminated and the date upon which such termination becomes effective. The Contractor will be entitled to receive compensation for all Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by FW prior to such termination and any other reasonable termination costs as negotiated by the parties, but no amount shall be allowed for anticipatory profits.

Upon receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to FW; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

22. INDEMNIFICATION (NOTE: Virginia law does not permit FW to indemnify others; cross indemnity provisions are not acceptable to FW)

The Contractor covenants for itself, its employees, and subcontractors to save, defend, hold harmless and indemnify FW, and all of its elected and appointed officials, officers, current and former employees (collectively "FW" for purposes of this section) from and against any and all claims made by third parties or by FW for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the work called for by the Contract Documents. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by FW, the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse FW for any and all expenses, including but not limited to, reasonable attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by FW and failure to do so may result in such amounts being withheld from any amounts due to Contractor under this Contract.

23. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that no intellectual property rights (including copyright, patent, mask work, trademark, industrial property, and trade secret rights) of third parties are infringed or in any manner involved in or related to the Equipment, System, Licensed Software, source code, documentation, or services provided hereunder.

The Contractor shall pay all copyright, patent or other royalties, licenses, or fees, if any, in respect of the use of the software or System. The Contractor shall defend, at its expense, any action or claim brought against FW to the extent that the action or claim is based on a claim that the manufacture, sale, operation or use of the Equipment, System, Licensed Software, source code, documentation, or services (or any part thereof) infringes any third party's intellectual property rights (including copyright, patent, mask work, trademark, industrial property, and trade secret rights) or breaches any third party's contract or quasi-contract rights, and the Contractor shall pay any and all costs (including but not limited to fines, penalties, license fees, court costs, attorney's fees and any costs or fees to the United States Patent and Trademark Office) and damages payable by FW in respect of any such action. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Contract. If, after notice by FW, the Contractor fails to fulfill its obligations contained in this section, the Contractor shall be liable for and reimburse FW for any and all expenses, including but not limited to, attorney's fees incurred and any settlements or payments made. The Contractor shall pay such expenses upon demand by FW

and failure to do so may result in such amounts being withheld from any amounts due to the Contractor under this Contract.

In addition, and without obviating the Contractor's responsibilities set forth above, if the Equipment, System, Licensed Software, source code, documentation, or services (or any part thereof) becomes or in the Contractor's opinion is likely to become the subject of a claim based on an alleged infringement or breach as aforesaid, the Contractor may, at its expense and option, with prior written notice of agreement by FW, do one of the following:

- a) modify the Equipment, System, Licensed Software, source code, documentation, or services so that there is no longer any infringement or breach without adversely affecting the functional capabilities of the foregoing;
- b) procure for FW the right to continue to use the Equipment, System, Licensed Software, source code, documentation, or services;
- c) substitute for the relevant Equipment, System, Licensed Software, source code, documentation, or services other equipment, software, or materials having a capability equivalent to the replaced Equipment, System, Licensed Software, source code, documentation, or services at no further expense to FW.

The Contractor shall have no liability respecting any claim of infringement or breach as aforesaid based entirely upon the combination, operation or use of the Equipment or Licensed Software with equipment, software, apparatus, devices or items not supplied by the Contractor and in a manner not substantially consistent with the Contractor's specifications and instructions.

24. INTELLECTUAL PROPERTY DEVELOPED PURSUANT TO CONTRACT

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to FW all right, title and interest, including the sole exclusive and complete patent, copyright, trade secret, or other intellectual property right or interest, in any and all works created pursuant to this Contract and capable of patent, copyright, trade secret, or other intellectual property protection. The Contractor further agrees to execute such documents and undertake such actions as FW may request to effect such transfer or assignment.

Further, the Contractor agrees that the rights granted to FW by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this paragraph.

The use of subcontractors or third parties in developing or creating input into any materials capable of patent, copyright, trade secret, or other intellectual property protection and produced as a part of this Contract is prohibited unless FW approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this

paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

25. OWNERSHIP AND RETURN OF RECORDS

This Contract confers no ownership rights to the Contractor nor any rights or interests to use or disclose FW's data or inputs.

The Contractor agrees that all drawings, specifications, blueprints, data, information, findings, memoranda, correspondence, documents or records of any type, whether written or oral or electronic, and all documents generated by the Contractor or its subcontractors as a result of FW's request for services under this Contract, are the exclusive property of FW ("Record" or "Records"). All such Records are subject to the assignment provisions of paragraph 28 above and shall be provided to and/or returned to FW upon completion, termination, or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause such materials to be used for any other purpose other than performance of all obligations under the Contract without the written consent of FW. Additionally, the Contractor agrees that the Records are "FW Information" as set forth in paragraph 30 below, that the Records are subject to the provisions of paragraph 30 below, and that neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the Project Officer or his or her designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Officer or his or her designee for response. At FW's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at FW's request, shall destroy all computer records created as a result of FW's request for services pursuant to this Contract.

The Contractor agrees to include the provisions of this section as part of any contract or agreement the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating this section of the Contract.

26. DATA SECURITY AND PROTECTION

The Contractor shall hold FW Information in the strictest confidence and comply with all applicable FW security and network resources policies as well as all local, state and federal laws or regulatory requirements concerning data privacy and security. The Contractor shall develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted FW Information received from, created or maintained on behalf of FW and strictly control access to FW Information. For purposes of this provision, and as more fully described in this Contract and FW's Non-Disclosure and Data Security Agreement ("NDA"), "FW Information" (also referred to as "FW Data" or "data") includes, but is not limited to, electronic information, documents, data, images, and records including, but not limited to, financial records, personally identifiable information, Personal Health Information

(PHI), personnel, educational, registration, tax or assessment records, information related to public safety, FW networked resources, and FW databases, software and security measures which is created, maintained, transmitted or accessed to perform the work under this Contract.

- a) **FW's Non-Disclosure and Data Security Agreement (NDA).** The Contractor shall require that an authorized Contractor designee, and all key employees, agents or subcontractors working on-site at FW facilities or otherwise performing non-incident work under this Contract, sign the NDA (attached as an Exhibit C) prior to performing any work or permitting access to FW networked resources, application systems or databases under this Contract. Copies of the signed NDAs shall be available to the FW Project Officer upon request.
- b) **Use of Data.** The Contractor shall ensure that the use, distribution, disclosure or access ("use") to FW Information and FW networked resources shall not occur in an unauthorized manner. Use of FW Information for other than as specifically outlined in this Contract is strictly prohibited, unless such other use is agreed to in writing by the parties. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access or disclosure of FW Information and any non-compliance with this DATA SECURITY AND PROTECTION provision or any NDA.
- c) **Data Protection.** Without limiting any of the Contractor's obligations with respect to the non-disclosure and protection of FW Information, the Contractor agrees that it will protect FW Information using at least the applicable standards established by the National Institute of Standards and Technology, specifically, NIST Special Publication 800-171 (with FW Information being treated and secured, at a minimum, as Controlled Unclassified Information). Also without limiting any of the Contractor's obligations with respect to the non-disclosure and protection of FW Information, the Contractor agrees that it will protect FW Information using at least the applicable state and local standards, including but not limited to Va. Code §§ 59.1-442 – 59.1-444 (the Virginia Personal Information Privacy Act), Massachusetts 201 CMR 17.00 (Standards for the Protection of Personal Information of Residents of the Commonwealth), as well as the applicable standards in the Payment Card Industry Data Security Standard (PCI DSS). In any event, the Contractor shall protect FW Information at least as rigorously as it protects its own valuable trade secrets and confidential information. The Contractor shall provide to FW a copy of its data security policy and procedures for securing FW Information and a copy of its disaster recovery plan/s. The Contractor shall provide, if requested by FW, on an annual basis, results of an internal Information Security Risk Assessment provided by a qualified independent firm.
- d) **Data Sharing.** Except as otherwise specifically provided for in this Contract, the Contractor agrees that it shall not share, disclosure, sell or grant access to FW Information to any third party without the express written authorization of the FW's Chief Information Officer or designee.
- e) **Security Requirements.** The Contractor shall maintain the most up to date anti-virus, industry accepted firewalls and/or other protections on its systems and networking

equipment. The Contractor certifies that all systems and networking equipment that support, interact or store FW Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store FW Data into hard drives must provide data at rest encryption. Significant deviation from these standards must be approved by FW's Chief Information Officer or designee. The downloading of FW Information onto laptops or any other portable storage medium is prohibited without the express written authorization of FW's Chief Information Officer or designee.

- f) **Data Protection Upon Conclusion of Contract.** Upon termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall return all FW Information to FW unless FW requests that such data be destroyed. This provision shall also apply to all FW Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall complete such return or destruction not less than thirty (30) days after the conclusion of this Contract and shall certify completion of this task, in writing, to the FW Project Officer and FW Chief Information Officer.
- g) **Notification of Security Incidents.** The Contractor agrees to notify the FW Chief Information Officer and FW Project Officer within twenty-four (24) hours of the discovery of any unintended access to, use or disclosure of FW Information.
- h) **Subcontractors.** To the extent the use of subcontractors is permitted under this Contract, the requirements of this entire paragraph 30 shall be incorporated into any subcontractor agreement entered into by the Contractor and any data sharing shall be compliant with these security and protection requirements and the NDA. In the event of data sharing, subcontractors shall provide to the Contractor a copy of their data security policy and procedures for securing FW Information and a copy of their disaster recovery plan/s.

27. *VIRGINIA FREEDOM OF INFORMATION ACT

The parties understand and agree that FW is subject to the terms and provisions of Code of Virginia §§ 2.2-3700 et. seq, the Virginia Freedom of Information Act ("VFOIA"). All public records in FW's custody, possession or control shall be open to the public for inspection and copying to the extent such disclosure is required by law. Certain exemptions or exclusions may apply, but it is the Contractor's obligation to assert any applicable VFOIA exclusions or exemption, to the satisfaction of the FW Project Officer, within the statutory deadlines. Thereafter it is the obligation of the Contractor to defend and indemnify FW from any claim or suit that may arise as a result of the withholding of records. The FW Project Officer shall make available to the Contractor any VFOIA request which the Project Officer reasonably believes the Contractor may have an interest in.

28. *ETHICS IN PUBLIC CONTRACTING

This Contract incorporates by reference Virginia law, as well as any federal law related to ethics, conflicts of interest, or bribery, including by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies

that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

29. *FAIRFAX WATER EMPLOYEES

No employee of FW shall be admitted to any share in any part of this Contract or to any benefit that may arise therefrom which is not available to the general public.

30. FORCE MAJEURE

The Contractor shall not be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of the Contractor, and outside and beyond the scope of the Contractor's then current, by industry standards, disaster plan, that make performance impossible or illegal, unless otherwise specified in the Contract.

FW shall not be held responsible for failure to perform its duties and responsibilities imposed by the Contract if such failure is due to fires, riots, rebellions, natural disasters, wars, or an act of God beyond control of FW that make performance impossible or illegal, unless otherwise specified in the Contract.

31. *AUTHORITY TO TRANACT BUSINESS

The Contractor shall, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the Initial Term and any Subsequent Contract Term(s) of this Contract. A contract entered into by the Contractor in violation of this requirement is voidable, without any cost or expense, at the sole option of FW.

32. *RELATION TO FAIRFAX WATER

The Contractor is an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered employees, servants or agents of FW. FW will not be legally responsible for any negligence or other wrongdoing by the Contractor, its employees, servants or agents. FW will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the Contractor. Furthermore, FW will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by FW for its employees.

33. ANTITRUST

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

34. REPORT STANDARDS

Reports or written material prepared by the Contractor in response to the requirements of this Contract or a request of the Project Officer shall, unless otherwise provided for in the Contract, meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Project Officer, and shall be submitted for advance review and comment by the Project Officer. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with these requirements shall be borne by the Contractor.

When submitting documents to FW, the Contractor shall comply with the following guidelines:

- All submittals and copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;
- Report covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of report pages (reports with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided; and
- Unnecessary attachments or documents not specifically asked for should not be submitted, and superfluous use of paper (e.g. separate title sheets or chapter dividers) should be avoided.

35. AUDIT

The Contractor shall secure an independent certified public accountant's audit of its finances and program operation after the close of each calendar year (December 31), but no later than October 15 of each such year, and shall forward to FW the findings of such audit in whole, including the management letter or other ancillary audit components, and permit FW to make such review of the records of the Contractor as may be deemed necessary by FW to satisfy audit purposes. In instances where a management letter was not prepared as an audit function, the Contractor must so certify in writing to FW at the time the audit report is submitted. All accounts of the Contractor are subject to such audit, regardless whether the funds are used exclusively for specific program activities or mingled with funds for other agency activities.

The Contractor agrees to retain all books, records and other documents related to this Contract for at least five (5) years after final payment. FW or its authorized agents shall have full access to and the right to examine any of the above documents during this period and during the Contract Term and for a period of five (5) years thereafter. If the Contractor wishes to destroy or dispose of records (including confidential records to which FW does not have ready access) within five (5) years after final payment, the Contractor shall notify FW at least thirty (30) days prior to such disposal, and if FW objects, shall not dispose of the records.

36. ASSIGNMENT

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Contract, without the prior written consent of FW.

37. AMENDMENTS

This Contract shall not be amended except by written amendment executed by persons duly authorized to bind the Contractor and FW.

38. *DISPUTE RESOLUTION

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, or extra work, or extra compensation or time, and all claims for alleged breach of Contract shall be submitted to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. Claims denied by the Project Officer may be submitted to FW's General Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the General Manager in the event of a contractual dispute is fifteen (15) days. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, General Manager, or a court, as the case may be.

39. *APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract and the work performed hereunder shall be governed in all respects by the laws of the Commonwealth of Virginia and the jurisdiction, forum, and venue for any litigation with respect thereto shall be in the Circuit Court for Fairfax County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

40. ARBITRATION

It is expressly agreed that nothing under the Contract shall be subject to arbitration, and any references to arbitration are expressly deleted from the Contract.

41. NONEXCLUSIVITY OF REMEDIES

All remedies available to FW under this Contract are cumulative, and no such remedy shall be exclusive of any other remedy available to FW at law or in equity.

42. NO WAIVER

The failure of either party to exercise in any respect a right provided for in this Contract shall not be deemed to be a subsequent waiver of the same right or any other right.

43. SEVERABILITY

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

44. *NO WAIVER OF SOVEREIGN IMMUNITY

Notwithstanding any other provision of this Contract, nothing in this Contract or any action taken by FW pursuant to this Contract shall constitute or be construed as a waiver of either the sovereign or governmental immunity of FW. The parties intend for this provision to be read as broadly as possible.

45. SURVIVAL OF TERMS

In addition to any numbered section in this Agreement which specifically states that the term or paragraph survives the expiration of termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO FAIRFAX WATER; OWNERSHIP AND RETURN OF RECORDS; AUDIT; INTELLECTUAL PROPERTY DEVELOPED PURSUANT TO CONTRACT; INTELLECTUAL PROPERTY INDEMNIFICATION; WARRANTY; CONFIDENTIAL INFORMATION AND DATA SECURITY.

46. HEADINGS

The paragraph and section headings in this Contract are inserted only for convenience and are not to be construed as part of this Contract or a limitation on the scope of the particular section to which the heading precedes.

47. AMBIGUITIES

Each party has participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

48. NOTICES

Unless otherwise provided herein, all notices and other communications required by this Contract 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 FAIRFAX WATER:

_____, Project Officer

AND

Elizabeth B. Dooley, CPPO, CPPB
Procurement Manager
Fairfax Water Authority
8570 Executive Park Avenue
Fairfax, Virginia 22031

49. *NON-DISCRIMINATION NOTICE

FW does not discriminate against faith-based organizations.

50. INSURANCE REQUIREMENTS

The Contractor shall provide to the FW Procurement Manager a Certificate of Insurance indicating that the Contractor has in force the coverage below prior to the start of any Work under this Contract and upon any contract extension. The Contractor agrees to maintain such insurance until the completion of this Contract or as otherwise stated in the Contract Documents. All required insurance coverages must be acquired from insurers authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides, and acceptable to FW. The minimum insurance coverage shall be:

- a) Workers Compensation - Virginia Statutory Workers Compensation (W/C) coverage including Virginia benefits and employers liability with limits of \$100,000/100,000/500,000. FW will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b) Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability, Independent Contractors, and Products Liability. The general aggregate limit shall apply to this Contract. Evidence of Contractual Liability coverage shall be typed on the certificate.
- c) Business Automobile Liability - \$1,000,000 Combined Single Limit (Owned, non-owned and hired).
- d) The Contractor shall carry Errors and Omissions or Professional Liability insurance which will pay for injuries arising out of errors or omissions in the rendering, or failure to render services or perform Work under the contract, in the amount of \$1,000,000.
- e) Insurance Against Intellectual Property Infringement – AMOUNTS TO BE NEGOTIATED.
- f) Cyber Security Liability Insurance Coverage: \$5,000,000 per occurrence.
- g) Additional Insured - Fairfax Water, and its officers, elected and appointed officials, employees, and agents shall be named as an additional insureds on all policies except Workers Compensation and Auto and Professional Liability; and evidence of the Additional Insured endorsement shall be typed on the certificate.
- h) Cancellation - If there is a material change or reduction in coverage the Contractor shall notify the FW Procurement Manager immediately upon Contractor's notification from the insurer. It is the Contractor's responsibility to notify FW upon receipt of a notice indicating that the policy will not be renewed or will be materially changed. Any policy on which the Contractor has received notification from an insurer that the policy has or will be cancelled or materially changed or reduced must be replaced with another policy consistent with the terms of this Contract, and FW notified of the replacement, in such a manner that there is no lapse in coverage. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
- i) Any insurance coverage that is placed as a "claims made" policy must remain valid and in force, or the Contractor must obtain an extended reporting endorsement consistent with the terms of this Contract, until the applicable statute of limitations has expired, such date as determined to begin running from the date of the Contractor's receipt of final payment.

- j) Contract Identification - The insurance certificate shall state this Contract's number and title.

The Contractor must disclose the amount of any deductible or self-insurance component applicable to the General Liability, Automobile Liability, Professional Liability, Intellectual Property or any other policies required herein, if any. FW reserves the right to request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible. Thereafter, at its option, FW may require a lower deductible, funds equal to the deductible be placed in escrow, a certificate of self-insurance, collateral, or other mechanism in the amount of the deductible to ensure protection for FW.

The Contractor shall require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, Workers' Compensation insurance and Insurance Against Intellectual Property Infringement in the same form and manner as specified for the Contractor. The Contractor shall furnish subcontractors' certificates of insurance to FW immediately upon request by FW.

No acceptance or approval of any insurance by FW shall be construed as relieving or excusing the Contractor from any liability or obligation imposed upon the Contractor by the provisions of the Contract Documents.

The Contractor shall be responsible for the work performed under the Contract Documents and every part thereof, and for all materials, tools, equipment, appliances, and property of any description used in connection with the work. The Contractor assumes all risks for direct and indirect damage or injury to the property or persons used or employed on or in connection with the Work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, or in connection in any way whatsoever with the contracted work.

The Contractor shall be as fully responsible to FW for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.

Notwithstanding any of the above, the Contractor may satisfy its obligations under this section by means of self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate financial capacity and the alternative coverages are submitted to and acceptable to FW. The Contractor must also provide its most recent actuarial report and provide a copy of its self-insurance resolution to determine the adequacy of the insurance funding.

51. *ACCESSIBILITY OF WEB SITE

If any work performed under this Contract results in design, development, maintenance or responsibility for content and/or format of any FW websites, or FW's presence on other third-party website, the Contractor shall perform such work in compliance with the Americans with Disabilities Act of 1990 (ADA).

52. *HIPAA COMPLIANCE (NOTE: It must be determined if this section is applicable; if so, a business associate agreement must be completed before a purchase order will be issued or a contract executed)

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security, and electronic transaction components of the Health Insurance Portability and

Accountability Act of 1996, as amended (“HIPAA”). Pursuant to 45 C.F.R. §164.502(e) and §164.504(e), the Contractor shall be designated a Business Associate pursuant and will be required to execute a Fairfax Water Business Associate Agreement. If the Contractor engages a subcontractor or subcontractors in the performance of Work under this Contract, the Contractor shall enter into an agreement with each of its subcontractors pursuant to 45 C.F.R. §164.308(b)(1) and the Health Information Technology for Economic and Clinic Health (HITECH) Act § 13401 that is appropriate and sufficient to require each subcontractor to protect Protected Health Information to the same extent required of the Contractor under Fairfax Water’s Business Associate Agreement and in a form approved by FW. The Contractor shall ensure that its subcontractors notify the Contractor, immediately, of any breaches in security regarding Protected Health Information.

The Contractor takes full responsibility for any failure to execute the appropriate agreements with its subcontractors and for the failure of its subcontractors to comply with the existing or future regulations of HIPAA and/or HITECH, and shall indemnify FW for any and all loss, damages, liability, exposure, or costs resulting therefrom.

53. ADA COMPLIANCE

Compliance with the Americans with Disabilities Act of 1990 (ADA) shall be the sole responsibility of the Contractor. The Contractor shall defend and hold FW harmless from any expense or liability arising from the Contractor’s non-compliance therewith. The Contractor’s responsibilities related to ADA compliance shall include, but not be limited to, the following:

- a. Access to Programs, Services and/or Facilities: The Contractor shall ensure its programs; services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor shall provide equivalent services in an accessible alternate location or manner to ensure that persons with disabilities are not denied access to services.
- b. Effective Communication: The Contractor, upon request, shall provide appropriate aids and services to facilitate effective communication with qualified persons with disabilities so that such persons can participate equally in the Contractor’s programs, services, and activities, including qualified sign language interpreters, documents in Braille, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments, as required by the ADA.
- c. Modifications to Policies and Procedures: The Contractor shall make the necessary modifications to its policies and procedures to ensure that people with disabilities have an equal opportunity to enjoy the Contractor’s programs, services, and activities, as may be required by the ADA. For example, individuals with service animals are welcomed in the Contractor’s offices or facilities, even where pets are generally prohibited.
- d. The Contractor shall not place a surcharge on a person with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy.
- e. Employment: The Contractor shall not discriminate on the basis of disability in its hiring or employment practices.
- f. Responding to inquiries from the U.S. Department of Labor.

WITNESS these signatures:

FAIRFAX COUNTY WATER AUTHORITY

CONTRACTOR

AUTHORIZED
SIGNATURE: _____

AUTHORIZED
SIGNATURE: _____

NAME: JAMIE BAIN HEDGES, P.E.
TITLE: GENERAL MANAGER

NAME AND
TITLE: _____

DATE: _____

DATE: _____

A Completed Attachment J Must be Included in Tab 1 of Proposal

Attachment J – 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 RFP 24-022 – Attachment List to this Agreement.

“Services” means the services provided by a prime and/or subcontractor related work for the Data Governance, Warehousing, Analytics, Strategy, and Implementation that is the subject of Fairfax Water’s RFP 24-002.

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, 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

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 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.

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: _____

A Completed Attachment K Must be Included in Tab 1 of Proposal

Attachment K - Business Associate Agreement

This Business Associate Agreement (“Agreement”) by and between [BUSINESS ASSOCIATE NAME] (“Business Associate”) and [PLAN SPONSOR NAME] (“Plan Sponsor”), for and on behalf of Plan Sponsor’s health plan for which Business Associate provides services (“Covered Entity”) and the Covered Entity’s Administrator (“Plan Administrator”), is effective as of _____, 202__ (the “Agreement Effective Date”) or other date reflected herein.

RECITALS

WHEREAS, the parties have entered into a separate services agreement (referred to herein as the “Services Agreement”) setting forth the duties and responsibilities of the parties relating to the services provided by Business Associate for Covered Entity;

WHEREAS, the parties wish to disclose certain information to each other pursuant to the terms of this Agreement and the Services Agreement, some of which may constitute Protected Health Information (defined below), and wish to enter into a business associate agreement that meets the requirements of current law concerning the handling and disclosure of individual health information;

WHEREAS, Covered Entity and Business Associate intend to (i) protect the privacy and provide for the security of Protected Health Information disclosed pursuant to this Agreement and the Services Agreement and (ii) comply with applicable transaction and code requirements set forth in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as most recently amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”), and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HHS”) (collectively “HIPAA”) and other applicable federal and state laws; and

WHEREAS, the parties acknowledge that certain federal or state laws may take precedence over HIPAA and agree that this Agreement, the operational requirements hereunder, and the Services Agreement shall be interpreted to enable the parties to comply with HIPAA, the Privacy Rule (defined below) and other applicable federal or state law.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement and the Services Agreement, the parties agree as follows:

1. **Definitions**. In addition to the definitions located elsewhere in the Services Agreement, the following shall apply to this Agreement:

- a. “Agent” shall mean an agent of the Business Associate other than a Subcontractor.
- b. “Breach” shall mean the acquisition, access, use or disclosure of Unsecured Protected Health Information in a manner not permitted under Subpart E of 45 C.F.R. Part 164 that compromises the security or privacy of such Protected Health Information (within the meaning of 45 C.F.R. Section 164.402).
- c. “Designated Record Set” or “DRS” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- d. “Electronic Protected Health Information” shall mean the information identified in subsections (i) and (ii) of the definition of “protected health information” contained in 45 C.F.R. Section 160.103 of the Privacy Rule.
- e. “HIPAA Omnibus Rule” shall mean the “Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act” published at 78 Federal Register 5566 (January 25, 2013).
- f. “HHS Transaction Standards Regulation” shall mean 45 C.F.R. Sections 160 and 162.
- g. “Individual” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- h. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.
- i. “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103, including such information created or received by Business Associate from or on behalf of Covered Entity.
- j. “Required by Law” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.103.
- k. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or designee.
- l. “Security Incident” shall mean, as provided in 45 C.F.R. Section 164.304, any attempted or successful unauthorized access, use, disclosure, modification, or destruction of Electronic Protected Health Information created, received, maintained or transmitted on behalf of the Covered Entity, or any successful interference with system operations in an information system related to such Electronic Protected Health Information.
- m. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164.
- n. “Subcontractor” shall have the same meaning given to it in 45 C.F.R. Section 160.103.
- o. “Unsecured Protected Health Information” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology as provided in 45 C.F.R. Section 164.402.

2. Permitted Uses and Disclosures of PHI. Business Associate agrees not to use or further disclose PHI other than as permitted or required hereunder, or as required by law. Except as otherwise limited in this Agreement or by law, Business Associate may: (a) use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Services Agreement between the parties and in this Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by a Covered Entity; (b) use PHI if necessary to carry out the legal responsibilities of Business Associate; (c) conduct any other use or disclosure permitted or required by HIPAA or applicable federal or state law; (d) use PHI if necessary for the proper management and administration of Business Associate; and (e) disclose PHI if necessary to carry out the legal responsibilities of Business Associate or for the proper management and administration of Business Associate if either (i) the disclosure is Required by Law or (ii) Business Associate obtains reasonable assurances from the person to whom the information disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to such person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Notwithstanding the above, Business Associate shall not use and/or disclose PHI that is genetic information for underwriting purposes in accordance with 45 C.F.R. Section 164.502(a)(5).

3. Obligations of Business Associate.

a. Appropriate Safeguards. To comply with Subpart C of 45 C.F.R. Part 164, Business Associate shall use reasonable and appropriate physical, technical, and administrative safeguards (i) to prevent use or disclosure of PHI other than as permitted under this Agreement or Required by Law and (ii) to reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity.

b. Reporting of Improper Use or Disclosure. Business Associate shall promptly report in writing to Covered Entity (i) any use or disclosure of PHI not provided for by this Agreement upon becoming aware of such use or disclosure and (ii) any Security Incidents, as described in 45 C.F.R. Section 164.314(a)(2)(i)(C), upon becoming aware of such Security Incident. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (i) any use or disclosure of PHI by Business Associate or its agents or subcontractors in violation of the requirements of HIPAA or this Agreement or (ii) any Security Incidents of Business Associate or its agents or subcontractors.

c. Reporting of a Breach. Business Associate shall promptly notify the Covered Entity in writing of a Breach, but in no case later than ten (10) business days following discovery of a Breach. This notification will include, to the extent known:

(i) the names of the individuals whose PHI was involved in the Breach;

- (ii) the circumstances surrounding the Breach;
- (iii) the date of the Breach and the date of its discovery;
- (iv) the information Breached;
- (v) any steps the impacted individuals should take to protect themselves;
- (vi) the steps Business Associate is taking to investigate the Breach, mitigate losses, and protect against future Breaches; and
- (vii) a contact person who can provide additional information about the Breach.

Business Associate will promptly investigate any Breaches, assess their impact under all applicable state and federal law, and promptly make a recommendation to Covered Entity as to whether notification is required pursuant to 45 C.F.R. Sections 164.404-408 and/or applicable state breach notification laws. Subject to the Covered Entity's prior approval, Business Associate will issue notices to such Individuals, state and federal agencies, including the Department of Health and Human Services, and/or the media as the Covered Entity is required to notify pursuant to, and in accordance with the requirements of applicable law (including 45 C.F.R. Sections 164.404-408). Business Associate will pay the costs of issuing notices required by law and all other remediation and mitigation that is necessary or appropriate to address the Breach. Business Associate shall provide the Covered Entity with information necessary for the Covered Entity to fulfill its obligation to report Breaches affecting fewer than 500 Individuals to the Secretary as required by C.F.R. Section 164.408(c). To the extent provided under 45 C.F.R. Section 164.410(a)(2), a Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate.

d. Business Associate's Agents and Subcontractors. To the extent required by 45 C.F.R. Sections 164.308(b)(2) and 164.502(e)(1)(ii), Business Associate shall ensure that any Agent or Subcontractor that creates, receives, maintains, transmits, or to whom it provides PHI on behalf of the Plan, agrees to at least the same restrictions, conditions and requirements that apply through this Agreement to Business Associate for such PHI.

e. Access to PHI. Business Associate shall provide access to an Individual, at the request of the Individual or the Covered Entity, to PHI in a Designated Record Set maintained by, or in the possession of, Business Associate in the time and manner required of a Covered Entity under 45 C.F.R. Section 164.524 or as Required by Law. Any denial of access to such PHI determined by Business Associate shall be the sole responsibility of Business Associate, including, but not limited to, resolution or reporting of all appeals and/or complaints arising therefrom.

Business Associate shall promptly report all such requests and their resolution to Covered Entity as mutually agreed by the parties. Business Associate shall promptly notify the Covered Entity of any request made to the Business Associate that extends to PHI not in the care, custody or control of Business Associate.

f. Amendment of PHI. Business Associate shall make a determination on any authorized request by an Individual for amendment(s) to PHI in a Designated Record Set maintained by, or in the possession of, Business Associate in the time and manner required of a Covered Entity under 45 C.F.R. Section 164.526 or as Required by Law. Any denial of such a request for amendment of PHI determined by Business Associate shall be the responsibility of Business Associate, including, but not limited to, resolution and/or reporting of all appeals and/or complaints arising therefrom in the time and manner required under 45 C.F.R. Section 164.526. Business Associate shall report all approved amendments or statements of disagreement/rebuttals in accordance with 45 C.F.R. Section 164.526. Business Associate also shall promptly report all such requests and their resolution to Covered Entity.

g. Documentation of Disclosures. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528. At a minimum, such documentation shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure. Business Associate shall retain such documentation for such period as is set forth in the Privacy Rule or other applicable laws.

h. Accounting of Disclosures. Business Associate agrees to provide to an Individual or the Covered Entity, in the time and manner required of a Covered Entity, with information collected in accordance with Section 3(g) of this Agreement in response to a request by an Individual for an accounting of disclosures of PHI (including, but not limited to, PHI contained within an "electronic health record" as defined in HITECH Section 13400(5)) in accordance with 45 C.F.R. Section 164.528 (as amended by HITECH). Beginning on the date required under HITECH (or such later date as may be established in HHS regulations or other guidance), should an Individual make a request for an accounting of disclosures related to electronic health records (or Covered Entity requests that Business Associate respond to such a request), Business Associate shall comply with a request for an accounting of disclosures made for treatment, payment, or health care operations purposes in accordance with HITECH Section 13405(c) and any HHS regulations or other guidance thereunder. Business Associate shall promptly report all such requests by an Individual and their resolution to Covered Entity.

i. Access to Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, upon reasonable

request by Covered Entity, or to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule, Security Rule or other requirements of HIPAA.

j. HHS Transaction Standards Regulation. If Business Associate conducts, in whole or part, standard transactions for or on behalf of Covered Entity, Business Associate will (i) comply, and will require any Agent or Subcontractor involved with the conduct of such standard transactions to comply, with the HHS Transaction Standards Regulation, and (ii) provide such information to, and perform such tests for or on behalf of, Covered Entity as may be necessary or appropriate to enable Covered Entity to file on a timely basis any certification required under the HHS Transaction Standards Regulation for such transactions.

k. Compliance with Security Rules. Business Associate shall:

(i) use appropriate physical, technical and administrative safeguards to reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity;

(ii) report to Covered Entity any Security Incident of which Business Associate becomes aware, upon becoming aware of such Security Incident;

(iii) ensure that any Agent or Subcontractor to whom it provides Electronic Protected Health Information received from, or created, maintained, transmitted or received by Business Associate on behalf of Covered Entity agrees to at least the same restrictions and conditions that apply throughout this Agreement to Business Associate with respect to such information;

(iv) enter into a contract or other arrangement with each of its Subcontractors that create, receive, maintain or transmit Electronic Protected Health Information on behalf of Business Associate pursuant to which the Subcontractor agrees to comply with the applicable requirements of the Security Rule; and

(v) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a Security Incident relating to Business Associate or any Agent or Subcontractor.

l. HIPAA Omnibus Rule Compliance. Business Associate shall:

(i) not receive, directly or indirectly, any impermissible remuneration in exchange for PHI or Electronic Protected Health Information, except as permitted by 45 C.F.R. Sections 164.506(a) and 164.508(a)(4);

(ii) comply with the marketing and other restrictions applicable to business associates contained in 45 C.F.R. Sections 164.506(a) and 164.508(a)(3);

(iii) fully comply with the applicable requirements of 45 C.F.R. Section 164.502 for each use or disclosure of PHI;

(iv) fully comply with 45 C.F.R. Sections 164.306 (security standards), 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies, procedures and documentation requirements); and

(v) to the extent required under HHS regulations or other guidance, comply with the additional privacy and security requirements enacted in the HIPAA Omnibus Rule that apply to business associates in the same manner and to the same extent as Covered Entity is required to do so.

4. Obligations of Covered Entity

a. Delegation to Business Associate. As set forth in Sections 3(e), 3(f), 3(g) and 3(h) of this Agreement, Covered Entity hereby delegates to Business Associate the Covered Entity's responsibility to provide access, amendment, and accounting rights to Individuals with respect to PHI in any Designated Record Set maintained by, or in the possession of, Business Associate. It is understood that Business Associate will interact with the Individual directly, up to and including resolution of any appeals or reporting of complaints under HIPAA or applicable federal or state law. Further, Covered Entity hereby delegates to Business Associate the Covered Entity's obligations with respect to notice of Breaches of Unsecured Protected Health Information. In accordance with Section 3(c) of this Agreement, Business Associate shall notify affected Individuals, Covered Entity, the Secretary, and media (if Required by Law) of such Breach within sixty (60) calendar days after discovery. Such notice shall comply with the notification requirements set forth in Subpart D of 45 C.F.R. Part 164 (45 C.F.R. Section 164.400 et seq.).

b. Responsibility for Further Disclosures. Covered Entity shall be responsible for ensuring that any further disclosure by Covered Entity of PHI (including, but not limited to, disclosures to employers, plan sponsors, agents, vendors, and group health plans) complies with the requirements of HIPAA and applicable federal and state law.

c. Applicable Law. HIPAA requires the Covered Entity and the Business Associate to comply with the Privacy Rule and applicable state privacy laws, based upon application of the preemption principles set forth in 45 C.F.R. Sections 160.201 et seq..

d. Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice to the extent that such changes affect Business Associate's use or disclosure of PHI under this Agreement. Business Associate shall not distribute its own notice to Individuals. Business Associate shall not be responsible for the content of Covered Entity's notice of privacy practices nor any error or omission in such notice.

e. Changes in Permission by Individual. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

f. Restrictions on PHI. Covered Entity shall notify Business Associate of any restriction upon the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522 (as amended by HITECH), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

g. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except for Business Associate's use of PHI for its proper management and administration or to carry out its legal responsibilities under Section 2 of this Agreement.

h. Disclosure to Third Parties. Covered Entity may request that Business Associate disclose PHI directly to another party. Covered Entity agrees that all such disclosures requested by Covered Entity shall be for purposes of Covered Entity's treatment, payment or health care operations or otherwise permitted or required under HIPAA or other applicable law.

5. Use of Limited Data Sets. The parties agree, for purposes of complying with 45 C.F.R. Section 164.502(b)(1), to limit, to the extent practicable, any use, disclosure and requests of PHI to a "limited data set" (as defined in 45 C.F.R. Section 164.514(e)(2)) or, if needed by the Business Associate or Covered Entity, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request. This Section will cease to apply on the effective date of regulations issued by the Secretary in accordance with HITECH Section 13405(b)(2)(C). The parties shall comply with any such regulations promulgated by the Secretary as of their effective date.

6. Compliance Audits. Covered Entity shall have the right to audit Business Associate's compliance with this Agreement. Upon request, Business Associate shall provide Covered Entity representatives reasonable access to Business Associate's relevant records and other information during normal business hours at Business Associate's place of business. Any such audits shall be conducted in accordance with the terms and conditions (if any) for Plan Sponsor audits set forth in the Services Agreement.

7. Indemnification. Covered Entity and Business Associate agree to indemnify, defend and hold each other harmless from any and all liability, damages, costs (including reasonable attorneys' fees and costs) and expenses imposed upon or asserted against the non-indemnifying party arising out of any claims, demands, awards, settlements or judgments relating to the indemnifying party's, or, as applicable, its director's, officer's, employee's, contractor's, business associate's, trading partner's, client employer's, and/or Covered Entity sponsor's use or disclosure of PHI contrary to the provisions of this Agreement or applicable law.

8. Term and Termination.

a. Term. The term of this Agreement shall commence as of the Agreement Effective Date, and shall terminate when the Services Agreement terminates or as otherwise provided herein. Upon termination, all of the PHI provided by either party to the other, or created or received by Business Associate on behalf of Covered Entity, shall be handled as provided in Section 8(c).

b. Termination for Cause. If either party breaches a material term of this Agreement, the non-breaching party shall provide a written notice of the breach and a reasonable opportunity to the other party to cure the breach or end the violation within a reasonable period of time specified in the notice. If the breach cannot be cured or is not cured within a reasonable period, this Agreement may be terminated immediately by the non-breaching party.

c. Effect of Termination.

(i) Except as provided in paragraph (ii) of this Section 8(c), upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of the PHI. This provision shall apply to PHI that is in the possession of Subcontractors or Agents of Business Associate.

(ii) The parties recognize that Business Associate and Business Associate's Subcontractors and Agents may be required to retain PHI to fulfill certain contractual or regulatory requirements, making return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate's Subcontractors and Agents shall likewise be contracted to extend such protections to PHI in their possession.

(iii) In no event shall this Section 8 affect any obligation of Business Associate to transfer Covered Entity's information and data to any successor services provider retained by Covered Entity or its successor under the Services Agreement or otherwise.

9. References. A reference in this Agreement to HIPAA means the law or regulation as in effect on the Agreement Effective Date or as subsequently amended, and for which compliance is required on the date of determination.

10. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is required for the parties to comply with the requirements of HIPAA. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable

federal and state laws and regulations, including but not limited to, the Privacy Rules or the Security Rules or other regulations promulgated pursuant to HIPAA.

11. Waiver. No delay or omission by either party to exercise any right or remedy under this Agreement will be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

12. Survival. The respective rights and obligations of Business Associate under Sections 6, 7 and 8 of this Agreement shall survive the termination of this Agreement and the underlying Services Agreement.

13. Severability. In the event any part or parts of this Agreement are held to be unenforceable, the remainder of this Agreement will continue in effect.

14. Parties to Agreement. The Covered Entity and Plan Administrator agree that they are parties to the Services Agreement (for purposes of complying with HIPAA only) and to the extent not so identified in the Services Agreement, the Services Agreement is hereby amended accordingly.

15. No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person, other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

16. Assignment. This Agreement is not assignable by either party without the other party's written consent.

17. Effect on Services Agreement. Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with the Agreement, all other terms of the Services Agreement shall remain in force and effect and govern this Agreement. This Agreement shall supersede and replace all prior business associate agreements between the parties.

18. No Agency Relationship. For purposes of this Agreement, Business Associate is not the agent of Covered Entity (as such term is defined under common law).

19. Interpretation. The provisions of this Agreement shall prevail over any provisions in the underlying Services Agreement, or any operational activities under the Services Agreement, that conflict or are inconsistent with any provision in this Agreement. Any ambiguity in this Agreement, the Services Agreement or in operations shall be resolved in favor of a meaning that permits Covered Entity or Business Associate to comply with HIPAA or the applicable federal or state law.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

[PLAN SPONSOR NAME]

By: _____

Title: _____

[BUSINESS ASSOCIATE NAME]

By: _____

Title: _____

A Completed Attachment L Must be Included in Tab 1 of Proposal

Attachment L – Conflict of Interest Statement

I, whose name is subscribed below, a duly authorized representative and agent of the entity submitting this Proposal to Fairfax Water (FW) in response to its Request for Proposal 24-022, and on behalf of the offeror:

Certify that neither the offeror nor any affiliated firm, parent corporation or subsidiary has, within the past five (5) years, been employed by or represented a deliverer of services, which services reasonably could be expected to be considered for purchase by FW as a result of this solicitation.

Affirm that if the offeror is awarded a contract under this solicitation, and during the term of that contract prepares an invitation to bid or request for proposal for or on behalf of the FW, the offeror agrees that it shall not (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public.

Affirm that the offeror further agrees that it shall not solicit or accept any commissions or fees from vendors who ultimately furnish services to FW as a result of services furnished by the offeror under any contract award made as a result of this solicitation.

Offeror Name: _____
Signed By: _____ Date: _____
Name/Title: _____

Acknowledgment

Commonwealth of Virginia/State of (_____)

City/County of (_____) to wit:

personally appeared before me this _____ day of 2024, the undersigned a Notary Public in and for the State and County of aforesaid, _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to within the instrument as an agent of the Offeror and acknowledged that he/she has executed the same for the purposes therein contained.

(Seal)

Notary registration number: _____

My commission expires: _____ 20____