



8570 EXECUTIVE PARK AVENUE
FAIRFAX, VIRGINIA 22031

REQUEST FOR PROPOSALS

Number: 24-213

Title: Per- and Polyfluoroalkyl Substances (PFAS)
Consulting, Planning, Science, and Engineering
Services

Date Issued: August 1, 2024

Pre-Proposal Conference (Virtual): August 9, 2024
10:00 A.M. Local Prevailing Time

Microsoft Teams Meeting
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Meeting ID: 274 245 422 625
Passcode: avk4sh

Dial in by Phone
[+1 571-348-5786](tel:+15713485786),
Phone conference ID: 965 661 213#

Deadline for Questions: August 13, 2024
Prior to 10:00 P.M. Local Prevailing Time

Addendum 1 Issued: August 19, 2024

Deadline for Submitting Proposals: August 30, 2024
Prior to 2:00 P.M. Local Prevailing Time

**Notification of Shortlisted
Offerors (Anticipated):** Mid-September

Oral Presentations (Anticipated): Early October

Proposals to Be Delivered to: Procurement Department
Fairfax Water
8570 Executive Park Avenue
Fairfax, Virginia 22031

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Procurement Contact:

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Procurement Program Supervisor
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1. SUMMARY INFORMATION

1.1. Introduction and Objective

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

The objective of this Request for Proposals (RFP) is to Award a Basic Ordering Agreement (BOA) Contract for professional services for per- and polyfluoroalkyl substance (PFAS) consulting, planning, science, and engineering, and related support services. **The successful Offeror will be precluded from pursuing other PFAS-related water treatment design contracts for FW for a period of five years from date of award of a Contract resulting from this RFP.**

1.2. Contract Award

A Contract will be Awarded, if at all, to the Offeror whose Proposal is determined to be the most advantageous to FW. The successful Offeror will be notified by issuance of a Notice of Award. Public notice of Award will be posted on the official FW web site at:

<http://www.fairfaxwater.org/procurement/index.htm>

1.3. Definitions

Whenever used in this RFP or in the other Contract Documents, the following terms have the following meanings, which are applicable to both the singular and plural and the male and female gender thereof:

- A. **Acceptance** – FW’s acceptance of the services under a Task Order, or the full BOA Contract, from the Consultant upon confirmation from the Project Officer and the Consultant that the Work is totally complete in accordance with the Contract requirements and that all defects have been eliminated. Final acceptance is confirmed by the making of final payment of the Contract Sum, as adjusted by any change orders.
- B. **Award** – means the decision by FW to award a Contract after all necessary approvals have been obtained.
- C. **Consultant** – the person, firm, partnership, corporation, or other legal entity with whom FW enters into a Contract to perform the services contemplated by this RFP and includes the plural number and feminine gender when such are named in the Contract as the Consultant.
- D. **Contract** – means the written agreement which, following conclusion of negotiations and any Award hereunder, will be executed by FW and the successful Offeror. Upon execution, the Contract will memorialize the terms and conditions pursuant to which the services described herein will be performed (including the negotiated fees and any modifications to the Standard Terms and Conditions, among other matters) and will incorporate by reference the remaining Contract Documents. The form of Contract is attached as Attachment A to this RFP.

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- E. **Contract Documents** – means the documents referred to in Attachment A of this RFP. The Contract Documents are deemed to constitute a BOA.
- F. **Contract Term** – means the period of time described in Attachment A of this RFP.
- G. **Default** – means that the Consultant has failed to fulfill one or more of its obligations in accordance with the Contract Documents.
- H. **Evaluation Committee** – means the group of individuals appointed by FW to review, evaluate, and rank each Proposal and to make a recommendation for Award.
- I. **Notice** – the term “Notice” or the requirement to notify means all communications, notices, demands, instructions, claims, approvals, and disapprovals required or permitted under the Contract Documents. To be effective, Notices must be in writing and will be effective if delivered by U.S. Mail, hand delivery or email transmission to the business address or email address of the Consultant as stated on its Proposal or if delivered in person to the Consultant, or any officer or principal of the Consultant. Unless otherwise specified herein, Notices will be deemed to have been duly served on FW if delivered by U.S. Mail, hand delivery, or email transmission to both: (i) the Director of Planning and Water Resources, Fairfax Water, email address GPrelewicz@FairfaxWater.org; and (ii) the Procurement Contact whose name address and email address are set forth on the cover page of this RFP. Either party may, by written Notice delivered in the manner prescribed herein, change its address and email address for receipt of Notices hereunder.
- J. **Offeror** – means any person, firm, corporation, or other legal entity who submits a Proposal in response to this RFP.
- K. **PFAS** – means per- and polyfluoroalkyl substances
- L. **Project Officer** – means the FW employee assigned to this BOA Contract for purposes of oversight of the Contract. The Project Officer will be responsible for all aspects of the Contract (excluding Contract modifications) after Contract Award, including but not limited to approving design changes, and authorizing payment for completed work, etc.
- M. **Proposal** – means the response by an Offeror to this Request for Proposals issued by FW. The response may include but is not limited to a description of technical expertise, work experience, and other information requested in the solicitation.
- N. **RFP** – means this Request for Proposals and includes any document, whether attached or incorporated by reference, and any Addenda.
- O. **Specifications** – the term “Specifications” refers to the written technical description of materials, equipment, construction systems, standards, and workmanship to be applied to the work and certain administrative details applicable thereto.
- P. **Task Order** – means the written order issued to the Consultant by FW from time to time during the Contract Term, as described in Section 2.1 of this RFP, specifying the work to be performed.

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Q. **Work** – means the scope of work performed by the Consultant under a Task Order.

1.4. Cancellation

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

1.5. Price Firm Period

Proposal Prices: Pricing will be firm and fixed as originally offered and accepted for the first 12 months of any resulting Contract.

1.6. Compliance With Laws

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

- A. It is qualified to do business in the Commonwealth of Virginia and that it will take such action as, from time-to-time hereafter, may be necessary to remain so qualified;
- B. It is not in arrears with respect to the payment of any monies due and owing FW, the Commonwealth of Virginia, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it will not become in arrears to any such entity during the term of this Contract;
- C. It will comply with all federal, state and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- D. It will obtain at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary for the lawful performance of its obligations under this Contract.
- E. The parties hereby acknowledge and agree that all provisions required by any Applicable Law to be set forth in this Request for Proposals will be deemed to have been included herein as if, and to the same extent as though, such provisions were to have been set forth in the Request for Proposals in their entirety.

1.7. Familiarity With Specifications

- A. Each Offeror will bear responsibility for thoroughly examining this RFP in its entirety. In the event that an Offeror has any questions or comments regarding the proper meaning or intent of any aspect of this solicitation, then such Offeror will submit all such questions and comments in writing to the Procurement Contact identified on the cover sheet of this solicitation in accordance with the provisions of Paragraph 3.3 (Questions and Communications) hereof.
- B. The submission by an Offeror of a Proposal in response to this RFP will be deemed to constitute a representation on the part of such Offeror that it has thoroughly examined this RFP and has submitted any and all questions and comments it may have regarding the meaning or interpretation of this solicitation to FW in the manner prescribed herein.

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1.8. Debarment Status

Neither the Consultant nor any officer or employee thereof has been debarred or suspended, or otherwise excluded from or ineligible for participation in, any public procurement activity of a nature similar to this RFP. The Consultant will not knowingly engage any subcontractor who has been debarred or suspended or who is otherwise excluded from or ineligible for participation in a public procurement activity and will include in each of its subcontracts and subcontractor agreements certifications on the part of its subcontractors that satisfy the requirements of this provision.

1.9. Incorporation By Reference

A. This solicitation is issued in accordance with, and controlled by, the Virginia Public Procurement Act (VPPA), which may be accessed at the following website:

www.fairfaxwater.org

B. The terms, conditions and Specifications contained herein including any attachments or addenda are incorporated into any Contract issued as a result of this solicitation.

1.10. Ethics In Public Contracting *

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

1.11. Precedence of Terms

By submitting a Proposal in response to this solicitation, the Offeror agrees that the terms and conditions contained in this RFP will control any Contract arising from this solicitation. To the extent that a conflict arises or is found to exist between the Offerors’ Proposal and this solicitation, including any addenda thereto, the terms, conditions and Specifications contained in this solicitation and any addenda thereto will in all cases prevail.

1.12. Hours of Operation and Holidays

The normal hours of operation are 8:00 a.m. through 4:30 p.m. EST; Monday through Friday excluding FW holidays. FW normally observes Virginia bank holidays. The Project Officer will provide the then current list of holidays after Contract Award.

1.13. Minimum Qualifications

To be qualified to perform the services described in this RFP, an Offeror shall demonstrate satisfactory prior experience on projects of a nature and scope similar to the services described herein. Specifically, the Consultant must have significant engineering experience with PFAS treatment, municipal drinking water treatment operations, and potable reuse systems.

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The Offeror shall demonstrate experience in the following areas:

- A. **PFAS Source Identification:** PFAS monitoring in watersheds and point/nonpoint source identification
- B. **PFAS Treatment:** Advanced drinking water treatment, potable reuse, transformation of PFAS through water and wastewater treatment; and PFAS removal from drinking water via processes including but not limited to: powdered activated carbon (PAC), granular activated carbon (GAC), ion exchange, novel media, and membrane processes
- C. **PFAS in Treatment Residuals:** Disposal/destruction of PFAS in contaminated media and brine and media regeneration
- D. **PFAS Regulations:** Studies of impacts of local, state, and federal regulations on water utility stance with respect to PFAS (Safe Drinking Water Act, Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and other regulations)
- E. **Cost Studies, Designs, and Construction of Treatment Upgrades:** Cost evaluations of PFAS management alternatives; design and construction of municipal water treatment facility upgrades, including traditional and alternative project delivery
- F. **Developing Public Information Materials and Communications Strategy:** Engaging with the public, policy makers, and other stakeholders
- G. **Emerging PFAS Science and Engineering:** Projects, reports, publications, or presentations on science and engineering topics related to PFAS and alternative project delivery prepared by proposed project personnel in last five years.

END SECTION 1

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2. SPECIFICATIONS/SCOPE OF WORK

2.1. Description and Summary of Requirements

The intent of this procurement is for FW to Contract with an engineering firm (the “Consultant”) to provide professional engineering services for PFAS consulting, planning, science, and engineering expertise, as further described below, to position FW to most effectively protect public health and comply with PFAS regulations by providing program support, analysis, and recommendations for the mitigation, treatment, and removal of PFAS.

All work performed shall be assigned by means of formal Task Orders which will relate to individual projects and be issued in writing by FW from time to time during the Contract Term. Each Task Order shall correspond to a clearly defined scope. The scope of work on each Task Order shall be negotiated and listed in hours by position (engineer, surveyor, draftsman, etc.), to include direct costs such as subconsultants, travel, reproductions, etc. The Consultant will be compensated by multiplying the hours worked for each position with the rates negotiated prior to Award and made part of the Contract Documents. Any Task Order issued hereunder will include the scope of work and fee for each task

FW reserves the right to issue no Task Orders, to perform the work using in-house resources or other contractors, or to otherwise assign work as it deems appropriate in accordance with established procedures, all as determined to be in the best interest of FW. Each Task Order will specify whether the work is to be performed directly by the Consultant or whether the Consultant is to prepare draft scopes of work for FW to separately procure the work. The following list provides general examples of types of Task Orders that may be issued under this contract, if FW deems appropriate:

- A. Analyze PFAS management alternatives and estimate capital and operating costs.
- B. Recommend additional monitoring and testing for the FW PFAS program.
- C. Evaluate potential PFAS sources in the watershed; propose mitigation options, and evaluate alternatives proposed by others.
- D. Advise FW on procurement options for acquiring pilot testing, engineering, and construction services, including both traditional and alternative project delivery approaches.
- E. Evaluate alternatives for management of PFAS in future FW waste streams, including PFAS hauling, destruction, and disposal.
- F. Provide other services in support of FW’s PFAS management program, such as assisting on strategic decisions, identifying and scoping additional related work to be performed by FW staff or other contractors, and reviewing proposals and work products on behalf of FW.

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2.2. Construction Specifications Format

Bid document format shall comply with current FW practices. FW currently uses the 16-division version of Construction Specifications Institutes MasterFormat published in 1995.

2.3. Computer Compatibility

FW uses the most recent versions of ESRI-ArcGIS Pro, AutoCAD and Microsoft 365 (previously Microsoft Office). If the Consultant provides data that is or becomes incompatible with the software versions used by FW, the Consultant will replace the data with data in a compatible format within three days of notification by FW.

2.4. Safety/OSHA Requirements

In the process of performing work under this RFP, Offerors are advised that it may be necessary for the successful Offeror and/or its employees and subcontractors to enter into permit-required confined spaces or other potentially hazardous environments. Prior to beginning any such work under this RFP, the Offeror will be required to attend a mandatory safety plan review meeting to discuss safety-related matters including, but not limited to site access, confined space entry, fall protection, and lockout/tagout. It will be the responsibility of the successful Offeror to ensure that its employees and subcontractors are properly trained and certified to enter and work in these hazardous environments under a formal confined space entry program. Furthermore, it will be the responsibility of the successful Offeror and any subcontractors to provide their own safety-related equipment including, but not limited to monitoring and personal protective equipment and energy isolating locks to be installed in conjunction with FW's lockout/tagout of all energy sources. The successful Offeror will not be permitted to use FW's safety equipment for work under this project nor can they work under FW's confined space entry permit. If Awarded a Contract hereunder, the Offeror covenants and agrees to fulfill the obligations set forth in this Section.

2.5. Insurance Claims Against Offeror

In addition to the mandatory insurance requirements listed in Attachment C (Insurance Checklist) and at the request of FW, any Offeror may be required to submit a list of all insurance claims made against it within the past 12 months. FW reserves the right to reject any offer or Proposal if in FW's opinion the amount or number of claims is deemed to be excessive. Failure to provide this information may result in rejection of a Proposal.

2.6. FW's Responsibilities

- A. FW will designate in writing a person to act as FW's representative with respect to the services to be rendered under the Contract. In the event a representative is not so designated within 30 days after the date of the Contract, such representative will be deemed to be FW's Director of Planning and Water Resources. Such person will have complete authority to issue Task Orders, transmit instructions, and receive information with respect to the successful Offeror's services on the Project.
- B. FW will, in a timely manner, make available to the selected Offeror, to the extent it is in the possession of FW, all information pertinent to the individual project or Task Order, including

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previous reports and any other data relative to design and/or construction of the project, including, as may be applicable and without limitation, the following:

1. For existing facilities; drawings, equipment Specifications, reports, construction documents, operations data, maintenance logs and other pertinent data.
 2. Data prepared by or services of others, including without limitation, borings, probing and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
 3. Environment assessments;
 4. Property, boundary, easement, right-of-way, topographic and utility surveys;
 5. Property descriptions; and
 6. Zoning, deed and other land use restrictions.
- C. In providing the foregoing information, FW makes no representation or warranty about its accuracy or completeness. The successful Offeror(s) will make such investigations and inquiries as it deems necessary to verify the accuracy and sufficiency of any such information.

END SECTION 2

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3. SUBMISSION OF PROPOSALS AND METHOD OF EVALUATION

3.1. General

The following general information is provided and will be carefully followed by all Offerors to ensure that Proposals are properly prepared.

- A. A Transmittal Form (see Attachment C to this RFP) signed by a duly authorized representative of the Offeror.
- B. Each Offeror must furnish all information required by this RFP.
- C. FW reserves the right to conduct discussions with qualified Offerors in any manner necessary to serve the best interest of FW and consistent with the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 et seq., the “Act”).

3.2. Proprietary Information

- A. Except as provided herein or as otherwise set forth in §2.2-4342 of the Virginia Public Procurement Act (Va. Code Ann. §2.2-4300 et seq., the “Act”), all proceedings, records, contracts and other public records relating to procurement transactions will be open to inspection in accordance with the Virginia Freedom of Information Act (Va. Code Ann. §2.2-3700 et seq., the “Virginia FOIA”).
- B. Each Offeror has the right to identify data or other materials submitted in connection with this procurement as trade secrets or proprietary information, which will not be subject to inspection pursuant to either §2.2-4342 of the Act or the Virginia FOIA, by completing and submitting Attachment D to FW prior to or at the time of submission of its Proposal.

3.3. Questions and Communications

- A. All contact between prospective Offerors and FW with respect to this solicitation will be formally held at scheduled meetings or in writing through the Issuing Office. Questions and comments regarding the meaning or interpretation of any aspect of this solicitation must be submitted in writing to the Procurement Contact identified on the cover page to this solicitation and must be received by the Procurement Contact on or before the deadline for submitting questions that is specified on such cover page. Only written questions will be accepted. Questions and/or comments which are submitted after the deadline set forth on the cover page to this solicitation will not be answered.
- B. FW will respond to all timely questions and comments that are properly submitted hereunder and are deemed to address a matter that is relevant and substantive in nature within a reasonable period of time, in the form of a written Addendum that will be transmitted to all prospective Offerors at the addresses furnished to FW for such purpose. Oral communications between FW and any Offeror regarding the interpretation or meaning of any aspect of this RFP are not authorized and may not be relied upon for any purpose.

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3.4. Addenda to the RFP

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

3.5. Duration of Proposals

Proposals will be valid for a minimum of 120 days following the deadline for submitting offers. If an Award is not made during that period, all offers will be automatically extended for another 120 days. Offers will be automatically renewed until such time as either an Award is made or proper notice is given to FW of Offeror's intent to withdraw its offer. Offers may only be withdrawn by submitting notice at least 15 days before the expiration of the then current 120-day period.

3.6. Arrearage

By submitting an offer in response to this solicitation, the Offeror will be deemed to represent that it is not in arrears in the payment of any obligation due and owing FW, the Commonwealth of Virginia, or any other public body in Virginia. This representation will be deemed to include the payment of taxes and employee benefits. The Offeror further agrees that, in the event it is Awarded a Contract hereunder, it will not become in arrears to any such public body during the term of the Contract.

3.7. Instructions for Submitting Proposals

The deadline for submitting Proposals is shown on the cover sheet. Proposals will be opened in accordance with the provisions of the Virginia Public Procurement Act. There will be no public Proposal opening.

Except as set forth below, the attached Transmittal Form (Attachment C) must accompany the Proposal. The purpose of the Transmittal Form is to formally submit the Proposal to FW and to bind the Offeror to the terms, conditions and Specifications contained in the solicitation. The Transmittal Form must be signed by an individual who is authorized to bind the Offeror to all matters set forth in the Proposal.

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Submit two (2) hardcopy sets of your Proposal. Identify one volume as “ORIGINAL” and include all originally signed documents in it. In addition to the hardcopy set, you must email to the Procurement Contact on the coversheet of the RFP an exact electronic copy of the hardcopy ORIGINAL Proposal within one business day of receiving a request from the Procurement Contact for the electronic copy.

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

From: _____

_____ <i>Name of Offeror</i>	_____ <i>Due Date</i>
_____ <i>Street</i>	_____ <i>RFP No.</i>
_____ <i>City, State, Zip Code</i>	_____ <i>RFP Title</i>

3.8. Late Proposals

Proposals or unsolicited amendments to Proposals arriving after the closing date and time will not be considered. Proposals received after the Proposal submission deadline will be returned to the Offeror unopened providing that sufficient Proposal identification information is shown on the outside of the Proposal package.

3.9. Proposal Organization

A. Proposals will address the following general topics and also emphasize the Offeror’s qualifications to perform the services. Proposals will be evaluated on the basis of the information presented by the Offeror and the evaluation criteria set forth in this RFP. Offerors are encouraged to keep their Proposal to less than 20 pages in length (11-point Arial font , printed one side, or, ten pages printed on both sides), excluding cover, cover letter, title sheets, dividers, etc. All pages in the Proposal must be 8-1/2" x 11”.

B. Offerors will follow the Proposal format outlined in this section. Failure to adhere to the prescribed format may result in rejection of the Offeror’s Proposal. Numbered sections and dividers are required for each of the sections listed and in the order below:

- **Section 1** – Forms and Narrative
- **Section 2** – Project Personnel
- **Section 3** – Experience and Qualifications
- **Section 4** – Financial Responsibility

All Proposal elements shall be included in the Technical Proposal and shall include at a minimum the following:

1. **Proposal Section 1 – Forms and Narrative:** Transmittal Form, Attachment C, must be fully completed and submitted in Section 1 or the Proposal could be deemed non-

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responsive. Attachment C also includes the Insurance Checklist. Attachment D – Public Disclosure of Trade Secrets and/or Proprietary Information, Attachment E – Conflict-of-Interest Statement, and Attachment F – Document Security License and Non-Disclosure Agreement must also be completed and submitted in this section.

Written Narrative: Each Offeror must provide a written narrative that includes, at a minimum, the following:

- a. brief history of the firm and its organization,
 - b. the name and contact information of the principal or officer who will serve as the primary point of contact for the Offeror and who will have authority to negotiate on behalf of the Offeror, and
 - c. general description of the Offeror’s experience in providing the services described in this RFP, including any special qualifications, experience, awards, etc. A
2. **Proposal Section 2 – Project Personnel:** This section will contain the names, background, office locations, education, and experience of the key personnel proposed for these generic services. An organizational chart showing duties, responsibilities and the lines of communication shall be included in this section. Resumes may be included as an appendix to the Proposal. Following Award of a Contract hereunder (if any), any substitution or other change in project team personnel must be approved in advance by FW.

Proposal Section 3 – Experience and Qualifications: This section should discuss the experience and qualifications of the Offeror and the project personnel in the performance of tasks similar to those described herein. Include detailed descriptions of those tasks and identify the role of key team members in the referenced projects. For joint ventures, the experience of all firms as it relates to this project must be discussed. Using Attachment B (“References”), provide at least one contact for each referenced project listed above, including the title of the project, contact name of an individual employed by the project owner, with telephone number, email address, and mailing address. This contact shall be a person having direct knowledge of the relevant scope of work and the Offeror’s performance during the Contract. The Offeror shall be responsible for providing current and accurate contact information regarding each of its listed references. FW reserves the right to require additional references from the Offeror, or to obtain additional references from other sources not provided by the Offeror.

3. **Proposal Section 4 - Financial Responsibility:** The Offeror will provide evidence of financial responsibility including a certified copy of the Offeror’s most recent audited financial statement. In the absence of a recent audited financial statement, the Offeror may submit for consideration by FW a certified copy of its most recent unaudited financial statement, provided that it was prepared by an independent accounting firm in accordance with generally accepted accounting principles. Unless such information is included in the Offeror’s Written Narrative (see Proposal Section 1, above), the Offeror additionally will provide a statement indicating the length of time the firm has been in business, the number and location(s) of its office(s), the approximate number of clients and the current number of full-time employees.

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3.10. Evaluation Committee and Criteria

Evaluation Committee: FW will establish an Evaluation Committee (the “Committee”) to review, evaluate, and rank each Proposal. The Committee will be composed of individuals designated by FW. The Committee may request additional technical assistance from other sources.

Evaluation Criteria: Each Proposal will be reviewed for compliance with the requirements of this RFP. The Offeror assumes responsibility for addressing all necessary technical and operational issues in order to meet the objectives of the RFP. Each Proposal will be evaluated and ranked according to the criteria set forth below:

1. **Technical Competence:** The projects in the Proposal demonstrate experience with topics described in this RFP.
2. **Quality of Work:** Demonstrates practices of the Offeror assure that high quality work is delivered to the client.
3. **Proposed Project Personnel:** Review of Offeror’s proposed project personnel including their resumes.
4. **Financial Responsibility:** Review of Offeror’s financial responsibility based on the certified audited financial statement and related information for its most recently completed fiscal year.
5. **Principal Participation:** Review of the resume for the Principal or Officer of the firm who will have responsibility for oversight of the work to be performed for FW and the role of the Principal or Officer in overseeing and ensuring the quality of the work.

3.11. Acceptable and Unacceptable Proposals and Rejection of Offers

FW reserves the right to: (a) reject any or all Proposals received; (b) cancel this RFP at any time prior to Award; and/or (c) waive informalities in the event that FW determines such action is in its best interests. Proposals must meet or exceed the mandatory requirements of this RFP. If an Offeror does not meet a mandatory requirement it will be rejected.

3.12. Oral Presentations

Finalists may be required to make individual presentations to the Committee as part of the technical evaluation process. If so notified by FW, the Offeror must provide a presentation within two calendar weeks of notification or as may be arranged by FW. Failure to provide a satisfactory presentation will be grounds for a declaration that the offer is non-responsive. Presentations will be conducted at FW’s offices or virtually, at FW’s discretion.

3.13. Final Ranking and Selection

Each Proposal will be ranked by the Evaluation Committee based upon the evaluation criteria set forth in this RFP. Selection will be based upon the Evaluation Committee’s judgment of the Offeror’s ability to perform the scope of services in a responsible manner using the highest standards of quality. FW will be the sole judge of the Offeror’s responsiveness and responsibility.

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3.14. Negotiation

FW staff will engage in individual discussions with one or more Offeror(s) deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. At the conclusion of discussions, on the basis of evaluation factors set forth in the RFP and all information developed in the selection process, FW will select in the order of preference one Offeror whose professional qualifications and proposed services are deemed most meritorious.

If a Contract satisfactory and advantageous to FW can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to FW, the Award shall be made to that Offeror. Otherwise, negotiations with the Offeror ranked first shall be formally terminated and negotiations conducted with the Offeror ranked second, and so on until such a Contract can be negotiated at a fair and reasonable price.

In the event that FW determines in writing and in its sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more highly qualified and suitable than the others under consideration, a Contract may be negotiated and Awarded to that Offeror. FW reserves the right to negotiate any aspect of the Proposal or the Contract in any manner that best serves the needs of FW and is within the scope of this RFP. FW is under no obligation to Award, but may do so based upon an analysis of submitted Proposals and subsequent interviews and negotiations.

END SECTION 3

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ATTACHMENT A

**BASIC ORDERING AGREEMENT FOR PFAS CONSULTING, PLANNING, SCIENCE,
AND ENGINEERING SERVICES**

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

CONTRACT NO. _____

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

1. CONTRACT DOCUMENTS

- A. The Contract will consist of the following items, which are listed in order of precedence and which together will be referred to as the “Contract Documents:”
1. Any Contract Changes or Amendments as discussed in Section 14;
 2. Any Task Orders, and all exhibits thereto, including Scopes of Work, Schedule and Not-to-Exceed Fee estimates, as applicable;
 3. The fully executed Contract, and all exhibits thereto;
 4. Any Addenda to RFP 24-213 (the “RFP”);
 5. The RFP and
 6. The successful Offeror’s Proposal.

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

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

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

2. SERVICES TO BE PROVIDED

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

3. TIME OF COMPLETION

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

4. CONTRACT TERM

This Contract shall commence on the Effective Date and will continue for a term of one year or when the cumulative total project fees incurred hereunder reach \$10,000,000 (the "Annual Cap"), whichever occurs first (the "Initial Term"). FW may, in its discretion, elect to renew the Contract for up to three additional one-year terms, subject in each such instance to the Annual Cap (each such additional term to be referred to herein as a "Renewal Term"). Any such renewal will be exercised by FW, if at all, by issuance of written Notice to the Consultant on or before the date that is 30 days prior to the expiration of the then-current Contract period. Engineering fees and charges applicable with respect to any Renewal Period will be determined in accordance with Section 6 of this Contract. The Initial Term and any Renewal Terms will be collectively referred to herein as the "Contract Term."

5. ENGINEERING FEES

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

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- B. Hourly pricing shall be firm and fixed during the Initial Term, and subject to Annual Economic Price Adjustments for each Renewal Term, if any.
- C. The maximum billing for Work performed during any Contract year during which this Contract is in effect will be \$10,000,000. No unused amounts may be carried forward from one Contract year to another. Individual Task Orders will not exceed \$2,500,000.
- D. Billings for the Work, including all Direct Expenses, will not exceed the maximum estimated amount set forth in the Task Order without the prior written approval of FW. The parties to this Contract must agree to any changes in the maximum estimated amounts, which will then be incorporated into the corresponding Task Order by written amendment.

6. ANNUAL ECONOMIC PRICE ADJUSTMENT

- A. The Consultant may submit a request for an economic price adjustment no more than once annually for each renewal year. Economic price adjustments will be limited to the increase specified in the Producers Price Index – Architectural, Engineering & Related Services (Series ID: PCU5413-5413) for the 12-month period ending 90 days prior to the end of the then current Contract year. As employed herein, the term “Producers Price Index” will mean the Producers Price Index as published by the Bureau of Labor Statistic, US Department of Labor. No other economic price adjustments will be allowed.
- B. The request for an economic price adjustment will be in writing and will include at a minimum the cause for the adjustment; and the amount of the change request with documentation to support the requested adjustment (i.e. appropriate BLS, Producers Price Index (PPI)).
- C. Negative BLS index: If the agreed upon index is a negative number, then the Consultant will, upon Notice by FW, immediately reduce Contract rates by the corresponding amount for the subsequent renewal year.
- D. Agreed upon updated annual rates shall apply to all remaining work on any open Task Orders at the time of renewal.

7. ACCESS TO DOCUMENTS

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

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

8. INTELLECTUAL PROPERTY RIGHTS

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

9. ASSIGNMENT OF INTEREST

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

10. AUTHORIZATION TO TRANSACT BUSINESS IN VIRGINIA *

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

11. AVAILABILITY OF FUNDS *

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

12. COMPLIANCE WITH LAWS

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

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

13. CONSULTANT’S REPRESENTATIONS

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

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14. CONTRACT CHANGES OR AMENDMENTS

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

15. CONTRACTUAL DISPUTES *

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

- i. Be delivered to the attention of FW's Procurement Manager and the General Manager, at the address shown on the cover sheet of this RFP, not later than five days after the occurrence or of the beginning of the Work upon which the claim is based; and
- ii. Contain a reasonably detailed description of the basis of the claim otherwise the claim will be deemed to have been waived. FW will make a written decision upon any such claim within 60 days after submittal of the claim. The Consultant will not institute legal action prior to receipt of FW's decision on the claim unless FW fails to render such decision within 90 days after submittal of the claim. The decision of FW will be final, unless the Consultant initiates legal action as provided in Section 2.2-4364 of the Virginia Code. Failure of FW to render a decision within 90 days will not result in the Consultant being awarded the relief claimed, nor will it result in any other relief or penalty. The sole result of FW's failure to render a decision within the time allotted will be the Consultant's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2-4365 of the Virginia Code has been established for contractual claims under this Agreement.

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

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

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

- i. Provide a drug-free workplace for the Consultant's employees;

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- ii. Post in conspicuous places, available to the Consultant's employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- iii. State in all solicitations or advertisements for employees placed by or on behalf of the Consultant that the Consultant maintains a drug-free workplace; and
- 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.

17. EMPLOYMENT DISCRIMINATION BY CONSULTANT PROHIBITED *

A. During the performance of this Contract, the Consultant agrees as follows:

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

B. The Consultant will include the provisions of the foregoing paragraphs (A)(i), (ii) and (iii) in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor, subconsultant or vendor.

18. ETHICS IN PUBLIC CONTRACTING

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

19. NOTICE OF REQUIRED DISABILITY LEGISLATION COMPLIANCE

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

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

20. GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL

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

21. INDEMNIFICATION

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

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

22. INSURANCE

- A. The Consultant will procure and maintain at its own expense, at all times throughout the Contract Term, insurance of such type and in such amounts as may be necessary to protect its interests and the interests of FW against hazards or risks of loss as hereinafter specified. All such insurance will be underwritten by responsible and solvent companies, acceptable to FW, and authorized to do business in the Commonwealth of Virginia. All insurance policies must be from insurers authorized to conduct business within the Commonwealth of Virginia and must have a Best's rating of at least A- and a financial size of class VIII or better in the latest edition of Best's Insurance Reports. Each insurance policy shall contain a provision requiring that not less than 30 days written Notice will be given to FW before the

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cancellation, non-renewal or material modification of such policy or coverage. Without limiting the requirements set forth herein, the insurance coverages will include a minimum of:

- i. Worker's Compensation and Employer's Liability insurance as required by the Commonwealth of Virginia.
 - ii. Business Automobile and Vehicle Liability Insurance. This insurance will be written in comprehensive form and will protect the Consultant and FW against claims for injuries to members of the public and/or damages to the property of others arising from the Consultant's use of motor vehicles or any other equipment and will cover operation with respect to on-site and off-site operations. Such insurance coverage will extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability will not be less than a \$1,000,000 combined single limit, each accident.
 - iii. Commercial General Liability. This insurance will be written in comprehensive form and will protect the Consultant and FW against claims arising from injuries to members of the public or damage to property of others arising out of any negligent act or omission to act of the Consultant or of any of its agents, employees, or subcontractors. The limit of liability will not be less than \$2,000,000 combined single limit.
 - iv. Professional Liability Insurance. Unless otherwise expressly agreed in writing by the Consultant and FW, the Consultant will furnish professional liability insurance coverage, including errors and omissions, in an amount not less than \$2,000,000. Professional subcontractors will provide limits commensurate with the responsibilities of their work.
 - v. Cyber Security / Data Breach Insurance. For any service offering hosted by the Contractor ten million dollars (\$10,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the FW's claimants or employers is processed or stored.
- B. The insurance coverage specified above will constitute minimum requirements and FW will be included as an additional insured in insurance coverages identified in Sections 22(A)(ii) and (iii).
- C. The Consultant shall file with FW evidence demonstrating its compliance with the foregoing insurance requirements not later than three (3) business days following the Effective Date of this Contract and within fifteen (15) days after renewal, material modification or replacement thereof. Such evidence shall be in the form of one or more certificates of insurance, each of which shall contain a requirement for a minimum of thirty (30) days prior written Notice to FW of any cancellation, non-renewal or material modification with respect to any such insurance coverage. Upon request by FW, the Consultant promptly shall cause copies of any or all insurance policies to be delivered to FW.

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

23. NO EMPLOYMENT OF UNAUTHORIZED ALIENS *

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

24. FAITH BASED ORGANIZATIONS *

FW does not discriminate against faith-based organizations.

25. NO WAIVER OR ESTOPPEL

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

26. OWNERSHIP OF PROJECT DOCUMENTS

All designs, drawings, Specifications and other instruments of service created by or on behalf of the Consultant in connection with the Project, and any and all copyrights and other intellectual property rights therein (together referred to herein as the "Instruments of Service") will be deemed for all purposes to be the property of FW. All other work products of the Consultant in connection with the Project and all documents and records in the possession, custody or control of the Consultant relating to the Project (together referred to herein as the "Project Documents") will be and will remain the property of the Consultant. Notwithstanding the foregoing, at any time during the term of the Contract and until the expiration of three years from the date of final payment

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hereunder, FW and its duly authorized representatives will have access to and will have the right to examine and copy the Project Documents as set forth in Section 7 above. Except as expressly set forth herein, this provision is not intended to and will not be construed to confer upon any person or entity that is not a party to this Contract any right of access to the Project Documents under statute or otherwise.

27. PAYMENT

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

28. PAYMENT CLAUSES REQUIRED IN ALL CONTRACTS *

- A. Within seven calendar days after receipt of each payment from FW, the Consultant will:
 - i. Pay each Subcontractor an amount equal to the percentage of the Work attributable to such Subcontractor; or
 - ii. Notify FW and the Subcontractor in writing of the intention to withhold all or part of the amounts due the Subcontractor, and state the reason for such withholding.
- B. In the event the Consultant fails to submit a timely invoice, and that failure is due exclusively to the actions of the Consultant, each Subcontractor will have the right to be paid by the Consultant upon demand, the amounts due.
- C. The Consultant will pay interest on amounts owed to any Subcontractor which remain unpaid seven days after the Consultant's receipt of payment from FW, provided, however, that amounts owed any Subcontractor which have been withheld properly, pursuant to this Section, will not accrue interest. Interest on amounts due any Subcontractor and unpaid will

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accrue at the rate of .5% per month; provided, however that the Consultant's obligation to pay interest hereunder will in no event be construed to be an obligation of FW. No Contract modification will be made, and no cost reimbursement claim will be submitted, for purposes of reimbursement for the interest charge.

- D. The Consultant will include in each of its subcontracts agreements a provision requiring each of its subcontractors to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier subcontractor.
- E. Upon completion of the work or Task Order, FW will prepare a Consultant evaluation reflecting the quality of the work performed. The evaluation will be provided to the Consultant for review and information.
- F. Upon completion of the work, a final payment affidavit and release of claims form will be executed by the Consultant. FW will not process final payment until such documentation has been received.

29. PROHIBITION AGAINST CONTINGENT FEES

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

30. SUBCONSULTANT AND/OR SUBCONTRACTOR SERVICES

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

31. TAX EXEMPTION *

FW is exempt from Federal Excise Taxes, Virginia State Sales and Use Taxes, and the District of Columbia Sales Taxes and Transportation Taxes. FW's tax exempt number is 54-6025290. The Consultant's obligation to pay any such taxes is not impacted in any way by its contractual relationship with FW.

32. TERMINATION OF CONTRACT

A. Termination for Cause. In the event the Consultant:

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

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

- B. Termination for Convenience.** FW will have the right to terminate the services of the Consultant at its own convenience for any reason or no reason upon seven days prior written Notice to the Consultant. In the event of termination under this Section, the Consultant will receive compensation for all Work completed through the date of such termination; provided, however, that upon receipt of Notice of termination the Consultant will, as soon as practicable, suspend all Work within its control (including Work performed by subcontractors or special contractors, if any) and will not incur any additional expense for which it seeks compensation. Furthermore, daily compensation for Work performed during the period between Notice of termination and termination will in no event exceed: (i) the average daily compensation paid to the Consultant for Work performed during the three months immediately preceding the date of the Notice of termination, or (ii) in the event the Contract is terminated prior to the date three months after the date of execution hereof, the average daily compensation paid to the Consultant for Work performed during the period beginning on the date hereof and ending on the date immediately preceding the date of the Notice of termination.

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33. SUCCESSORS AND ASSIGNS

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

34. VIRGINIA FREEDOM OF INFORMATION ACT

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

35. REMEDIES NOT EXCLUSIVE

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

36. NATURE OF RELATIONSHIP

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

37. NOTICES

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

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38. MISCELLANEOUS

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

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

[CONSULTANT NAME]

By: _____
Name: _____
Title: _____

Date: _____

Address for Notices:

Attn: _____
Email Address: _____

FAIRFAX WATER

By: _____
Jaime Bain Hedges, P.E.
General Manager

Date: _____

Address for Notices:
Fairfax County Water Authority
8570 Executive Park Avenue
Fairfax, Virginia 22031
Attn: Elizabeth B. Dooley, CPPO, CPPB, Procurement Manager
Email Address: edooley@fairfaxwater.org

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ATTACHMENT B

REFERENCES

OFFERORS' NAME: _____

1. **COMPANY NAME:** _____

PROJECT TITLE: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (_____) - _____ - _____

E-MAIL: _____

2. **COMPANY NAME:** _____

PROJECT TITLE: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (_____) - _____ - _____

E-MAIL: _____

3. **COMPANY NAME:** _____

PROJECT TITLE: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (_____) - _____ - _____

E-MAIL: _____

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OFFERORS' NAME: _____

4. **COMPANY NAME:** _____

PROJECT TITLE: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE: (_____) - _____ - _____

E-MAIL: _____

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ATTACHMENT C

TRANSMITTAL FORM

By submitting this Transmittal Form in response to the above-referenced RFP, the Offeror hereby acknowledges and agrees that: (a) Fairfax Water has the right to conduct such research and verification with regard to the information set forth in the Offeror's Proposal and attachments as it deems reasonably necessary and appropriate under the circumstances, including contacting project owners and other involved parties for references with respect to the Offeror's prior performance; and (b) in the event that the Offeror is Awarded a Contract hereunder, the Offeror agrees to execute a Contract with Fairfax Water in substantially the form of Attachment A pursuant to which the Offeror will agree to perform the services described in the RFP in accordance with the terms and conditions set forth in Attachment A of the RFP (subject to any agreed-upon modifications) and the fee schedule agreed upon by Fairfax Water and the Offeror.

Applicant must provide all information requested herein.

Please type or print clearly in black ink.

Offeror's Full Legal Name	Type of Entity and State of Organization or Incorporation
Offeror's Principal Address	Offeror's Mailing Address (if different)
Name and Title of Offeror's Principal Contact for Purposes of this RFP	Telephone No. and E-Mail Address of Principal Contact
	Offeror's SSN or Federal Employer ID No.

In accordance with Section 2.2-4311.2 of the Virginia Code, provide the identification number issued to the Offeror by the Virginia State Corporation Commission (VSCC) in the space provided below. If the Offeror is not required to be authorized to transact business in Virginia under Title 12.1 or Title 50, or any other law; provide a statement as to why your firm is not required to be so authorized **Offeror's VSCC ID Number:** _____

-or-

Offeror's Statement as to why it is not required to be authorized to transact business in Virginia (attach additional sheets, as necessary):

	Name of Applicant
	Signature of Authorized Representative
	Name of Representative
	Title
	Date

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ATTACHMENT C
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: _____

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ATTACHMENT D

**PUBLIC DISCLOSURE OF
TRADE SECRETS AND/OR PROPRIETARY INFORMATION**

Under the Virginia Public Procurement Act, an Offeror may elect to designate portions of its Proposal as trade secrets or proprietary information. In order to obtain protection from mandatory public disclosure laws, an Offeror must complete the chart below by identifying with specificity each item of information for which protection is sought and providing an explanation as to why protection from public disclosure is necessary. In order to be effective, an Offeror must identify any trade secrets or proprietary information set forth herein at or prior to submission of its Proposal.

OFFERORS' NAME: _____

<u>SECTION:</u>	<u>DESCRIPTION OF INFORMATION</u>	<u>JUSTIFICATION</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Note: If this Attachment D is left blank, the Offeror's Proposal will be deemed *not* to contain any trade secrets or proprietary information and will result in your firm's Proposal being subject to public inspection. Requests for protection after the deadline for submission of Proposals will not be eligible for consideration.

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ATTACHMENT E

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 24-213, 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____

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ATTACHMENT F

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 24-213 – Attachment List to this Agreement.

“Services” means the services provided by a prime and/or subcontractor related work Per- and Polyfluoroalkyl Substances (PFAS) Consulting, Planning, Science, and Engineering Services that is the subject of Fairfax Water’s RFP 24-213.

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

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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

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

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

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

Section 6 – Incidents:

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

Section 7 - Notices:

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

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

For Licensor: Attention: _____
Email: _____
Fax: _____

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

Section 8 – Term and Termination:

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

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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

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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.

RFP 24-213

PFAS Consulting, Planning, Science, and Engineering Services

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: _____