**FAUQUIER COUNTY WATER AND SANITATION AUTHORITY**

**Baldwin Ridge Storage Tank II Materials Purchase**

 **Contract No. 18-M-01-0226**

**PURCHASE AGREEMENT**

**THIS AGREEMENT,** made the day of 2018, by and between the **FAUQUIER COUNTY WATER AND SANITATION AUTHORITY,** a public body politic and corporate (hereinafter called the "Authority"), and (hereinafter called the "Vendor"), recites and provides as follows:

**RECITALS**

**WHEREAS,** the Authority wishes to purchase from the Vendor a waterline and related materials (the "Goods and Services") and the Vendor wishes to provide such Goods and Services, all on the terms and conditions set forth herein in an amount not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_. .

**AGREEMENT**

**NOW THEREFORE,** in consideration of the premises contained herein, and intending to be legally bound, the Authority and Vendor hereby agree as follows:

**1. Goods and Services**

The Vendor shall provide the Goods and Services as set forth in Exhibit "A" - Bid Specifications and shall provide all personnel, equipment, materials, and transportation services required in connection therewith. The specific Goods and Services purchased by the Authority will be defined by the Bid Specification included with this Agreement.

**2. Price and Charges**

The Vendor shall provide the Goods and Services for $ and set forth in Exhibit "B" - Bid Prices and Proposals which is a complete deliverable and ready for the Authority's use, including all applicable freight, delivery, and handling charges. The Vendor hereby acknowledges that extra charges will not be allowed. The Vendor agrees to hold pricing firm for a period of sixty (60) days from date of bid opening.

**3. Delivery Date**

The Goods shall be delivered as set forth in Exhibit "B" - Bid Price and Proposals. The Vendor shall contact the Authority forty-eight (48) hours prior to delivery so that appropriate personnel are on hand to receive delivery. The Services shall be provided according to a schedule that is mutually acceptable to the Authority and the Vendor.

**4. Testing and Inspection**

The Authority reserves the right to conduct any test and/or inspection it may deem advisable to assure Goods and Services conform to the specifications as set forth in Exhibit "A" - Bid Specifications.

**5. Taxes**

The Authority is exempt from all direct Federal and State taxes. Tax Certificate of Exemption forms will be issued upon request. All deliveries under this Agreement shall be free of Federal excise and transportation taxes.

**6. Invoices**

Invoices for Goods and Services ordered, delivered and accepted, shall be submitted by the Vendor directly to the payment address shown on the Purchase Order. All invoices shall show the Authority Purchase Order Number.

**7. Payment Terms**

Payment will be made forty-five (45) days after receipt of a proper invoice, or forty-five (45) days after receipt of all goods or acceptance of work, whichever is the latter.

**8. Payment to Subcontractors**

The Vendor is hereby obligated to pay any and all subcontractor(s) within seven (7) days of the Vendor's receipt of payment from the Authority for the proportionate share of the payment received for work performed by the subcontractor(s) under this agreement.

**9. Assignment of Contract**

The Vendor shall not assign, transfer, convey, sublet, or otherwise dispose of this Agreement or of its right, title, or interest therein, or of the power to execute such Agreement, to any other person, firm or corporation without the prior written consent of the Authority. In no case shall such consent relieve the Vendor from its obligations or change the terms of this Agreement.

Subject to the foregoing, this Agreement shall be binding upon, and inure to the benefit of, each of the parties hereto, and their respective successors and assigns.

**10. Nondiscrimination in Hiring Practices**

During the performance of this Agreement, the Vendor agrees as follows:

A. The Vendor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Vendor. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. The Vendor, in all solicitations or advertisements for employment placed by or on behalf of the Vendor, will state that such Vendor is an equal opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Article.

The Vendor shall include the provisions of Article 13, Paragraphs A, B and C, herein, in every subcontract or purchase order in connection with the Goods and Services in amounts equal to or exceeding $10,000, in order that the foregoing provisions will be binding upon each subcontractor or vendor.

The Vendor certifies that the Vendor does not and will not during the performance of this Agreement violate the provisions of the Federal Immigration and Reform Act of 1986, which prohibits the employment of illegal aliens.

**11. Ethics in Public Contracting**

The provisions contained in §s 11-72 through 11-80 of the Virginia Public Procurement Act, as set forth in the 1950 Code of Virginia, as amended, is applicable to all contracts solicited or entered into by the Authority. The Vendors certifies that its bids was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other vendor, supplier manufacturer or subcontractor in connection with its bid, and that it has not conferred any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

**12. Anti-Trust**

By entering into this Agreement, the Vendor conveys, sells, assigns, and transfers to the Authority all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States, the Commonwealth of Virginia and the County of Fauquier, relating to the particular Goods and Services purchased or acquired by the Authority under this Agreement.

**13. Termination**

The Authority, at its sole discretion, may terminate this Agreement, should the Goods and Services fail to conform to the specifications as set forth in Exhibit "A" - Bid Specifications, upon forty eight (48) hours written notice to the Vendor. In the event of termination under this Article, the Vendor shall receive compensation for all Goods received and accepted and/or all Services satisfactorily completed through the date of such termination.

**14. Disputes**

Contractual claims (whether for money or for other relief) shall be submitted in writing to the Executive Director of the Authority no later than sixty (60) days after final payment; provided, however, that written notice of the Vendor's intention to file such claim must be given at the time of occurrence or beginning of the portion of the Services upon which the claim is based, whichever occurs later. A written decision upon any such claim will be made by the Executive Director of the Authority within sixty (60) days after submittal of the claim.

The Vendor may not institute legal action prior to receipt of the Executive Director’s decision on the claim, unless the Executive Director fails to render such decision within one hundred and twenty (120) days after submittal of the claim. The decision of the Executive Director shall be final, unless the Vendor initiates legal action as provided in § 11-70 of the 1950 Code of Virginia, as amended. Failure of the Executive Director to render a decision within one hundred and twenty (120) days shall not automatically result in the Vendor being awarded the relief claimed, nor shall it automatically result in any other relief or penalty. The sole result of the Executive Director’s failure to render a decision within the time allocated shall be the Vendor's right to immediately institute legal action. No administrative appeal procedure pursuant to § 11-71 of the 1950 Code of Virginia, as amended, has been established for contractual claims under this Agreement.

**15. Notices**

All notices hereunder shall be in writing, shall be given either manually or by mail and shall be deemed sufficiently given when actually received by the party to be notified or when mailed, if mailed by certified or registered mail, postage prepaid, addressed to such party at his address set forth below. Any party may, by notice to the other parties given in the manner provided for herein, change his or its address for receiving such notices.

Address for notices to the Vendor:

Address for notices to the Authority:

TBD, Executive Director

Fauquier County Water and Sanitation Authority

7172 Kennedy Road

Warrenton, VA 20187-3907

**16. Indemnity by the Vendor**

The Vendor shall indemnify and hold harmless the Authority (its members, officers, employees and authorized representatives) from and against any breach of any representation or warranty, or any loss, damage, expense or liability to the extent arising from the willful misconduct or negligent act, error or omission of the Vendor or of the Vendor's subcontractors or subconsultants, if any, in the provision of the Goods or the performance of the Services contemplated by this Agreement.

**17. Governing Law; Venue**

This Agreement shall be construed and performed in accordance with the laws of the Commonwealth of Virginia, without reference to conflict of law principles. Resolution of any outstanding claims, counterclaims, disputes and other matters arising out of or in connection with this Agreement shall be decided in a court of competent jurisdiction in the Commonwealth of Virginia; provided that nothing contained herein shall vitiate the finality of the Executive Director’s decisions pursuant to Article 14 of this Agreement.

**18. Entire Agreement**

This Agreement constitutes the entire agreement of the parties relating to its subject matter and supersedes all prior and contemporaneous agreements of the parties in connection herewith.

**19. Prohibition of Contingency Fees**

The Vendor warrants that it has not employed any company or person other than a bona fide employee working for the Vendor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Vendor, any favor, commission, percentage, gift, or any other compensation contingent upon or resulting from the award or making of this or any other agreement relating to the Goods and Services. In the event of breach of this provision, the Authority shall have the right to terminate this Agreement with the Vendor 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 and costs.

**20. Cumulative Rights**

The rights and remedies provided in this Agreement shall not be exclusive, but shall be cumulative and in addition to all other rights and remedies provided by applicable law, including but not limited to statutory or common law indemnity, contribution, or other remedy at law or in equity.

**21. Waiver Not Continuing**

The waiver by either party of any failure on the part of the other party to perform any of its obligations under this Agreement shall not be construed as a waiver of any future or continuing failure or failures, whether similar or dissimilar thereto.

**22. Surviving Obligations**

The representations, warranties and covenants of the parties shall continue after and survive, and be enforceable notwithstanding, the execution of this Agreement, the completion of the provision of the Goods and Services or the expiration or other termination of this Agreement.

**23. Captions**

The captions in this Agreement are for purposes of convenience only and form no substantive part of this Agreement. In no event shall they be deemed to limit or modify the text of this Agreement.

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**IN WITNESS WHEREOF,** the parties hereto have made and executed this Agreement as of the day and year first above written.

 AUTHORITY:

**FAUQUIER COUNTY WATER AND SANITATION AUTHORITY**

ATTEST: BY:

 TBD

 Executive Director

 VENDOR:

ATTEST: BY: