



CITY OF SUFFOLK

Purchasing Division

P.O. Box 1858, Suffolk, VA 23439-1858; T (757) 514-7520; Fax (757) 514-7524

AGREEMENT

Water Meters

Annual Services Contract

Contract # 2014-00065

This AGREEMENT, made and entered into this, the 30 day of April 2014 by and between the CITY OF SUFFOLK, VIRGINIA whose principal office is the Municipal Center, 441 Market Street, Suffolk, VA 23434, hereinafter referred to as the "CITY", party of the first part, and HD Supply Waterworks Ltd. with an office located at 2820 Mary Linda Ave., Roanoke, VA 24012, hereinafter referred to as the "CONTRACTOR", party of the second part.

The CONTRACTOR did on the 17th day of April 2014 submit a sealed bid to perform the services stipulated in accordance with the Invitation for Bid for the CITY entitled "Water Meters", hereinafter referred to as "PROJECT", which by reference is made a part hereof.

It is mutually understood and agreed by the parties hereto that the following documents are incorporated herein by reference the same if each had been fully set out and attached hereto and hereinafter shall be referred to as the "Contract Documents":

Invitation to Bid, Number 2014-00065-AT inviting Contractors to bid; Conditions of Contract (General, Special, Supplemental and other conditions as they may be titled); bid dated April 17, 2014; Certificate of Insurance, and Anti-collusion/Nondiscrimination/Drug-Free Workplace Clauses.

In consideration of the following mutual agreements and covenants to be kept by each party:

A. SCOPE

The CONTRACTOR shall furnish cold water meters to the City of Suffolk, Department of Public Utilities, for use in their water distribution system. All meters obtained through this Agreement with the City are for the City's use and will not be subject to resale. The meters will be utilized for the replacement of existing meters within the system and for new service locations. The quantities are annual estimates only and impose no obligation on the City to purchase a minimum numbers of meters each year. All meters must be new. Refurbished meters of any kind will not be accepted.

B. CONTRACTOR'S SERVICES

Upon determination by the City of a need for services from the CONTRACTOR, the CITY will verbally and/or in writing notify the CONTRACTOR of services required, desired time frame for the completion of those services, and any known project constraints. Cost estimates shall be based upon the CONTRACTOR'S submitted bid price(s); scope of services and time schedules. The scope of services shall be performed based on executed "Purchase Orders" for any water meters that are needed on an "as needed basis".

Upon the CITY'S authorization by purchase order, the CONTRACTOR, on behalf of the CITY, shall provide for and undertake services related to water meters. Services shall include, but are not limited, to the following:

1. **CITY OF SUFFOLK ORDER PLACEMENT:** The orders will be placed by the Department of Public Utilities. A purchase order will be required for jobs in excess of the small dollar thresholds established in the City of Suffolk Procurement and Procedures Manual. The order will detail the quantity and other pertinent information. The order will also state the delivery address and a contact name.
2. **ORDER QUALITY AND DELIVERY:** Deliveries shall include multiple locations. Vendor is to contact Public Utilities prior to delivery to ensure that receipt of order is in compliance with requested specifications. No order shall be delivered to any other location than what is shown on the purchase order/proof unless prior arrangements have been made. On large or complex projects a mutually agreeable timeframe will be negotiated.
3. Should the selected vendor provide poor delivery time on three (3) or more occasions during the contract period, City of Suffolk may, without further recourse, cancel any further obligations under said agreement. Notification of such action shall be sent to the Vendor in writing, and such revocation may be considered by the City when evaluating bids in the future.
4. **PACKAGING:** The City of Suffolk requires that all packages be received in good condition and clearly labeled with the using departments name and contact person. Packages received in less than good condition will be returned to the vendor without further obligation to the City.
5. **INVOICING PROCEDURES:** When orders are delivered, vendors should also leave an actual invoice at that time. The invoice left should state "Invoice" somewhere on the top of the form. This will hopefully facilitate the payment process from City departments.
6. **PRODUCT QUALITY:** During the term of the agreement, substitutions will not be permitted without prior written approval by the Purchasing Division. Substitutions shall be at the discretion of the City; if rejected, Contractor shall allow full credit for items returned.

Where certain manufacturers are designated with "No Substitutions", or in the event that the using department is unfamiliar with the offered brand, vendors wishing to have their products considered for future contract periods shall submit samples, at no cost to the City, to the using department at least

sixty (60) days prior to the next proposed contract period. The City of Suffolk, in its sole discretion, shall determine if a product is equal to that specified, considering quality, economy of operation, and suitability for the purpose intended.

7. PRICING

- a. All prices offered herein shall be firm against any increase for one (1) year from the date that the contract is fully executed. After this date, it shall be Contractor's responsibility to notify the Buyer in advance of any anticipated changes in prices and submit a request for a price increase by furnishing bona-fide manufacturer's documentation of price lists reflecting the changes. Increases shall be limited to the actual cost increase to the Contractor, which is initiated by the item manufacturer and shall only be allowed at the beginning of each renewal period of the contract.
- b. City of Suffolk reserves the right to accept or reject request for price increase within 30 days of such notice. If the price increase is rejected, the specific item in question may be canceled. If the price increase is approved, the price will remain firm for one (1) year from date of acceptance.
- c. Prices quoted shall include **inside delivery costs**. Prices quoted shall be exclusive of all applicable Federal and Virginia State taxes. Tax exemption certificate will be furnished.

8. CONTRACTOR'S INVENTORY

The Contractor shall notify the City of Suffolk when out of stock on any item due to circumstances beyond his control. The City reserves the right to procure out-of-stock items from other sources in these situations.

9. ORDERING AND INVOICING

Orders will be placed with the vendor as needed by the Department of Public Utilities.

Contractor shall submit all invoices and credit memos to the using department; each shall reference the appropriate Purchase Order. All credit memos' must indicate original invoice number.

10. RETURNS

For items delivered incorrectly, the Contractor shall pick up items to be returned on his next regular delivery or within seven (7) days of notification, whichever comes first, and allow full credit for items returned in original condition.

11. DELIVERY REQUIREMENTS

All deliveries shall be **inside delivery** unless otherwise instructed and shall

be made directly to the using department.

Contractor shall furnish an itemized delivery ticket complete with unit pricing with each order. All delivery tickets shall include the Purchase Order number and must be signed by City of Suffolk personnel and a copy left at the delivery location.

C. TERM OF CONTRACT

The initial term of the AGREEMENT shall be from date of execution until April 30, 2015. The CITY reserves the exclusive right to renew the contract for four (4) additional one year terms through April 30, 2019. Each AGREEMENT shall have an option to extend the terms of the existing AGREEMENT until completion of any work undertaken but not completed during the original terms of the AGREEMENT.

D. THE CITY SHALL PROVIDE

1. Available pertinent information and available data requested by the CONTRACTOR during each order.
2. Certain assumptions that may be necessary to the CONTRACTOR.

E. COMPENSATION TO THE CONTRACTOR

The CONTRACTOR agrees to furnish and pay for all labor, tools, equipment, machinery, supplies, facilities, superintendence, insurance, taxes, permits, licenses, and services necessary to perform all items set forth in the Invitation for Bid, and attached and made a part hereof in strict compliance with the Contract Documents for the prices quoted on the BID FORM submitted April 17, 2014, subject to adjustment as provided in said documents.

F. PAYMENT TO THE CONTRACTOR

Monthly payments for work completed under this AGREEMENT shall be made in strict accordance with the project specifications and any special conditions attached thereto.

Upon acceptance of work, the CITY will render payment within forty-five (45) days of receipt of invoice. Interest shall accrue at the rate of one percent per month.

Prior to payment, the CONTRACTOR shall provide their federal employer identification number.

Unless otherwise provided under the terms of this AGREEMENT, interest for late payment shall not exceed one percent (1%) per month.

G. CHANGES AND ADDITIONS

It shall be the responsibility of the CONTRACTOR to notify the CITY, in writing, of any necessary modifications or additions in the Scope of this AGREEMENT.

Compensation for changes or additions in the Scope of this AGREEMENT will be negotiated and approved by the CITY in writing.

It is understood and agreed to by both the CITY and the CONTRACTOR that such modifications or additions to this AGREEMENT shall be made only by the full execution of the CITY'S standard AGREEMENT change order form. Furthermore, it is understood and agreed by both parties that any work done by the CONTRACTOR on such modification or addition to this AGREEMENT prior to the CITY'S execution of its standard AGREEMENT change order form shall be at the total risk of the CONTRACTOR, and said work may not be compensated by the CITY.

H. PAYMENT TO SUBCONTRACTOR

Payments to subcontractor(s) shall be made in accordance with § 2.2-4354 of Code of Virginia (1950), as amended. Unless otherwise specified in this AGREEMENT, interest shall accrue at the rate of one percent (1%) per month.

I. TERMINATION

Subject to the provisions below, the AGREEMENT may be terminated by the CITY upon thirty (30) days advance written notice to the other party; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the AGREEMENT may be extended upon written approval of the CITY until said work or services are completed and accepted.

1. Termination for Convenience

In the event that this AGREEMENT is terminated or canceled upon request and for the convenience of the CITY, without the required thirty (30) days advance written notice, then the CITY shall negotiate reasonable termination costs, if applicable.

2. Termination for Cause

Termination by the CITY for cause, default or negligence on the part of the CONTRACTOR shall be excluded from the foregoing provision; termination costs, if any, shall not apply. The thirty (30) days advance notice requirement is waived in the event of Termination for Cause.

J. NON-APPROPRIATION

Notwithstanding anything contained herein to the contrary, this AGREEMENT shall be terminated if all of the following events shall have occurred.

Funds are not appropriated for a subsequent fiscal period during the term of this AGREEMENT for the acquisition of substantially the same functions as provided for herein, and written notice thereof is given to the CONTRACTOR at least thirty (30) days prior to the first day of such subsequent fiscal period or within five (5) days of the approval of the final budget for such fiscal year, whichever occurs later.

CITY has exhausted all funds legally available for payment under this AGREEMENT.

Upon such termination, the CONTRACTOR'S only remedy shall be to terminate the AGREEMENT at the end of the fiscal period during which notice is given; and payment in compliance with the AGREEMENT for materials, goods, and services rendered there under during the fiscal year at the end of which termination occurs, without penalty, termination, profit or overhead expenses of any kind, shall constitute full performance on the part of the CITY.

K. ASSIGNMENT

Neither the CITY nor the CONTRACTOR shall assign, sublet or transfer their right or obligations in the AGREEMENT without the written consent of the other; such consent shall not be unreasonably withheld. Assignment by the CONTRACTOR to any current or future parent, subsidiary, or affiliate in connection with a corporate transaction shall not require the consent of the CITY.

L. NOTICE

Any notice, demand, or request by or made pursuant to this AGREEMENT shall be personally delivered in writing or deposited in the United States mail, postage prepaid, to the representative specified below or as otherwise designated in writing and mutually agreed.

Jay Smigielski
Purchasing Agent
441 Market Street, Room 105
Suffolk, Virginia 23434

With a copy to: Selena Cuffee-Glenn
City Manager
441 Market Street
Suffolk, Virginia 23434

Contractor: Thomas P. Hart
HD Supply Waterworks Ltd.
2820 Mary Linda Ave
Roanoke, VA 24012

The CITY'S representative will be Kimberly Wieckert, Customer Service Manager, Department of Public Utilities, as otherwise designated in writing:

City of Suffolk
Department of Public Utilities
1258 Holland Road
Suffolk, Virginia 23434
(757) 514-7015

The CONTRACTOR'S representative shall be Thomas P. Hart, Vice President, or as otherwise designated in writing and accepted by the CITY in writing.

HD Supply Waterworks Ltd.
2820 Mary Linda Ave.
Roanoke, VA 24012
(540)342-8000

The contract number is 2014-00065. All invoices, documents, and correspondence should reference the contract number.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONTRACTOR and the CITY.

M. CONFLICT OF INTEREST

CONTRACTOR shall not accept or receive commissions or other payments from third parties for soliciting, negotiating, procuring, or effecting insurance on behalf of the CITY.

N. NON-DISCRIMINATION

During the performance of this AGREEMENT, the CONTRACTOR agrees that they will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, service disabled veterans or any other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the CONTRACTOR. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

Also, the CONTRACTOR in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, will state that the CONTRACTOR is an equal opportunity employer.

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

The CONTRACTOR will include the provisions of this nondiscrimination clause in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor supplying services, goods or materials in connection with this AGREEMENT.

O. DRUG-FREE WORKPLACE REQUIREMENTS

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

For the purposes of this paragraph, "drug-free workplace" means a site for the performance of work done in connection with a specific AGREEMENT awarded to

the CONTRACTOR where employees at such site are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the AGREEMENT.

P. INSURANCE AND INDEMNITY

1. The CONTRACTOR shall purchase and maintain in force, at his own expense, such insurance as will protect him and the CITY from the claims which may arise out of or result from the CONTRACTOR'S execution of the work, whether such execution be by himself, his employees, agents, subcontractors, or by anyone for whose acts of them may be liable. The insurance coverage shall be such as to fully protect the CITY, the CONTRACTOR and the general public from any and all claims for injury and damage resulting by any actions on the part of the CONTRACTOR or his forces as enumerated above. The CONTRACTOR shall furnish a copy of the original Certificate of Insurance, naming City of Suffolk as additional insured. The CONTRACTOR shall furnish insurance in satisfactory limits, and on forms and of companies which are acceptable to the City's Attorney and/or Risk Management and shall require and show evidence of insurance coverage on behalf of any subcontractors (if applicable), before entering into any agreement to sublet any part or the work to be performed under this AGREEMENT. The minimum limit of liability is \$1,000,000 each occurrence of General Liability with a \$2,000,000 aggregate limit; and \$1,000,000 combined single limit of Automotive Liability.
2. Insurance must be furnished by such companies as authorized and licensed to transact business in the Commonwealth of Virginia. The CONTRACTOR shall furnish the CITY with a certificate evidencing insurance coverage as above with the CITY named as an Additional Insured under General Liability and Automobile Liability. Each certificate or policy shall carry the provision that the CITY shall be given thirty (30) days prior written notice of any cancellation or non-renewal of coverage.
3. The CONTRACTOR shall defend, indemnify and save harmless the CITY and its employees, officers, and any and all of its departments, divisions, and authorities from all claims, loss, damage, injury liability, costs and expenses of whatsoever kind or nature (including attorney's fees) caused by or resulting from the CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT; and without limiting the generality of the foregoing, the same shall include injury or death to any person or persons and damage of any property, including that of the CITY.
4. The CONTRACTOR'S indemnification obligation with respect to any and all claims against the City or any of it's officers, agents, employees, by any employee or statutory employee of the CONTRACTOR, of any CONTRACTOR'S subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts the CONTRACTOR'S or CONTRACTOR'S subcontractor may be liable, shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any CONTRACTOR'S subcontractors under Workers Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

Q. RESPONSIBILITY OF CONTRACTOR

The CONTRACTOR shall, without additional costs or fee to the CITY, correct or revise any errors or deficiencies in his performance. Neither the CITY'S review, approval or acceptance of, nor payment for any of the services required under this AGREEMENT shall be deemed a waiver of rights by the CITY, and the CONTRACTOR shall remain liable to the CITY for all costs which are incurred by the CITY as a result of the CONTRACTOR'S negligent performance of any of the services furnished under this AGREEMENT.

R. COMPLIANCE WITH FEDERAL IMMIGRATION LAW

CONTRACTOR does not, and shall not, during the performance of the AGREEMENT for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

S. SEVERABILITY

If any part, term, or provision of this AGREEMENT, shall be found by the Court to be legally invalid or unenforceable, then such provision or portion thereof, shall be performed in accordance with applicable laws. The invalidity or unenforceability of any provision or portion of any AGREEMENT document shall not affect the validity of any other provision or portion of the AGREEMENT document.

T. CONTROLLING LAW; VENUE, PENDING/DURING LITIGATION

This AGREEMENT is made, entered into, and shall be performed in the City of Suffolk, Virginia, and shall be governed by the applicable laws of the Commonwealth of Virginia without regard to its conflict of law rules. In the event of litigation concerning this AGREEMENT, the parties agree to the exclusive jurisdiction and venue of the Circuit Court of the City of Suffolk, Virginia; however, in the event that the federal court has jurisdiction over the matter, then the parties agree to the exclusive jurisdiction and venue of the U.S. District Court for the Eastern District of Virginia, Norfolk Division.

The CONTRACTOR shall not cause a delay in services because of the pending or during litigation proceedings, except with the express, written consent of the CITY or written instruction/order from the Court.

U. COMPLIANCE WITH STATE LAW, FOREIGN AND DOMESTIC BUSINESS AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH

A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if such is required by Title 13.1 or Title 50 or as otherwise required by law. Such status shall be maintained during the term of the contract. A public body may void any contract with a business if the business fails to remain in compliance with the provisions of this section.

V. MANNER OF PAYMENT/INTEREST

The CONTRACTOR shall provide his social security number, and proprietorships, partnerships, and corporations shall provide their federal employer identification number.

W. ENTIRE AGREEMENT

This AGREEMENT comprises the entire understanding between the parties and cannot be modified, altered or amended, except in writing and signed by all parties.

IN WITNESS WHEREOF, the parties hereto have executed and sealed this AGREEMENT
as of the day and year first above written.

CITY OF SUFFOLK, VA

BY: _____

Jay Smigielski
Purchasing Agent

HD SUPPLY WATERWORKS LTD

BY: _____

Thomas P. Hart
Vice President

ATTEST:

BY: _____

Print Name: JAMES J. REMUNDIN

Title: DISTRICT MANAGER