

**ARLINGTON COUNTY, VIRGINIA  
OFFICE OF THE PURCHASING AGENT  
2100 CLARENDON BOULEVARD, SUITE 500  
ARLINGTON, VA 22201**

**RIDER AGREEMENT NO. 22-DES-R-651**

THIS AGREEMENT (hereinafter "Agreement") is made, on the date of its execution by the County, between PRO COMM E.L.S. LLC. ("Contractor"), a Virginia corporation with a place of business at 725 Pulaski Hwy. Joppa, MD. 20185 authorized to transact business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia ("County"). The County and the Contractor, for the consideration specified herein or specified in a County Purchase Order referencing this Agreement, agree as follows:

**1. CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Exhibit A Fairfax County Water Authority Notice of Award, Contract IFB 19-58, Exhibit B Notice of Renewal. This Agreement rides a contract awarded to the Contractor by Fairfax County Water Authority and extended by the Contractor to the County on the same terms and conditions as the Contractor's agreement with Fairfax County Water Authority. Where the terms of this Agreement vary from the terms and conditions of the other Contract Documents, the terms and conditions of this Agreement shall prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either of them has made any representation or promise with respect to the parties' agreement which is not contained in the Contract Documents.

**2. CONTRACT TERM**

The Contractor's provision of goods and services for the County ("Work") shall commence upon the execution of the Agreement by the County" and shall be completed no later than June 30, 2022 ("Contract Term"), subject to any modifications as provided for in the Contract Documents regarding the Contract Term. No aspect of the Work shall be deemed complete until it is accepted by the County's Project Officer.

Upon satisfactory performance by the Contractor, if the County of Fairfax Water Authority renews their agreement identified in Exhibit A, the County may elect to renew this Agreement under the same contract terms for Four (1) one-year renewal periods from August 1, 2021 to July 31, 2022 ("Subsequent Contract Term"). However, if the County of Fairfax Water Authority does NOT renew their agreement identified in Exhibit A this Agreement shall automatically expire on the contract expiration date.

**3. PAYMENT**

Payment will be made by the County to the Contractor within thirty (30) days after receipt by the County Project Officer of an invoice detailing the Work provided by the Contractor and accepted by the County. Each invoice must certify that the invoice submitted is a true and accurate accounting of the work performed and goods and/or services provided and must be signed and attested to by the Contractor or authorized designee. The Project Officer will either approve the invoice or require corrections. The number of the County Purchase Order pursuant to which authority goods or services have been performed or delivered shall appear on all invoices.

**4. SCOPE OF WORK**

The Contractor agrees to perform the goods and/or services described in the Contract Documents (hereinafter “the Work”). The primary purpose of the Work is Utility Locating Services.

The Contract Documents set forth the minimum Work estimated by the County and the Contractor to be necessary to complete the Work. It shall be the Contractor’s responsibility, at the Contractor’s sole cost, to provide the specific Work set forth in the Contract Documents sufficient to fulfill the purposes of the Work. Nothing in the Contract Documents shall be construed to limit the Contractor’s responsibility to manage the details and execution of the Work.

**5. PROJECT OFFICER**

The performance of the Contractor is subject to the review and approval of the County Project Officer (“Project Officer”) who shall be appointed by the Director of the Arlington County department or agency which seeks to obtain the Work pursuant to this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its Work pursuant to the Contract Documents.

**6. COUNTY PURCHASE ORDER REQUIREMENT**

County purchases are authorized only if a County Purchase Order is issued in advance of the transaction. A Purchase Order must indicate that the ordering agency has sufficient funds available to pay for the purchase. Such a Purchase Order is to be provided to the Contractor by the ordering agency. The County will not be liable for payment for any purchases made by its employees without appropriate purchase authorization issued by the County Purchasing Agent. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense.

**7. NON-APPROPRIATION**

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

**8. COVID-19 VACCINATION POLICY FOR CONTRACTORS**

Due to the COVID-19 pandemic, the County has taken various steps to protect the welfare, health, safety and comfort of the workforce and public at large. As part of these steps, the County has implemented various requirements with respect to health and safety including policies with respect to social distancing, the use of face-coverings and vaccine mandates. All County Contractors, entering County owned, controlled, or leased facilities or facilities operated by a contractor if the services provided at that location are exclusive to Arlington County Government or contractors with public facing responsibilities must adopt these policies for implementation with their employees and subcontractors working on County contracts.

Contractors are required to obtain and maintain the COVID-19 vaccine status of employees or subcontractors, require any unvaccinated or not fully vaccinated employees to follow a weekly testing protocol established by the Contractor to submit to weekly testing, and provide any accommodations as required by law. Contractor should submit the certification of compliance to the Purchasing Agent at the time of contract execution and within five working days of the end of each quarter (see Exhibits D). In addition, all Contractor and subcontractor employees subject to the requirements of this section must also comply with the County COVID-19 masking and social distancing protocols, as signed at each County location.

It is recognized that the COVID-19 pandemic is an ongoing health crisis. As such, requirements with respect to health and safety, including vaccines and face-coverings may change over time. Contractors are expected to adhere to the County requirements as they evolve in response to the crisis.

For questions, the Contractor may email [contractorvaccineinfo@arlingtonva.us](mailto:contractorvaccineinfo@arlingtonva.us).

**9. APPLICABLE LAW, FORUM, VENUE AND JURISDICTION**

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

**10. NOTICES**

Unless otherwise provided herein, all notices and other communications required by this Contract shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered by an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO THE CONTRACTOR:**

Mike Hicks  
Director of Operations- South Mid-Atlantic Region  
725 Pulaski Hwy.  
Joppa, MD. 21085  
Phone: (443) 414-1902  
Email: [mike@procommels.com](mailto:mike@procommels.com)

**TO THE COUNTY:**

Nicadra Brown  
4200 28<sup>th</sup> St. S.  
Arlington, Virginia 22206  
Phone: (703) 228- 0060  
Email: [nbrown@arlingtonva.us](mailto:nbrown@arlingtonva.us)

AND

Dr. Sharon T. Lewis, LL.M, MPS, VCO, CPPB  
Purchasing Agent  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201  
Phone: (703) 228-3294  
Email: [slewis1@arlingtonva.us](mailto:slewis1@arlingtonva.us)

**TO COUNTY MANAGER’S OFFICE (FOR PROJECT CLAIMS):**

Mark Schwartz, County Manager  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 318  
Arlington, Virginia 22201

**11. ARLINGTON COUNTY BUSINESS LICENSES**

The Contractor must comply with the provisions of Chapter 11 (“Licenses”) of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060, or e-mail [business@arlingtonva.us](mailto:business@arlingtonva.us).


**12. COUNTERPARTS**


This Agreement may be executed in one or more counterparts and all of such counterparts shall together constitute one and the same instrument. Original signatures transmitted and received via facsimile or other electronic transmission, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall be effective as delivery of a manually executed original counterpart.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

PRO COMM E.L.S. LLC.

AUTHORIZED SIGNATURE:   
NAME: Meloni Hurley  
TITLE: Assistant Purchasing Agent  
DATE: 4/1/2022

AUTHORIZED SIGNATURE:   
NAME: Mike Hicks  
TITLE: Director  
DATE: 3/31/2022



**EXHIBIT C**

**CONTRACTOR COVID-19 VACCINATION CERTIFICATION**

I hereby certify that all PRO COMM ELS (Contractor Name) employees and subcontractors who will be working on Contract No. 22-DES-R-651 are fully vaccinated against COVID-19, or being tested on a weekly basis, or are exempt pursuant to a valid reasonable accommodation under state or federal law.

**Please do not include any of your employees' medical documentation, including vaccination records or test results.**

Date: 3/31/2022

Signature:  Mike Hicks  
A03F336A6D0843B...

Printed Name: Mike Hicks  
Director

Title: \_\_\_\_\_

**EXHIBIT D**

**CONTRACTOR COVID-19 VACCINATION QUARTERLY COMPLIANCE CERTIFICATION**

**By Email:** Please complete the report below and return it to: [contractorvaccineinfo@arlingtonva.us](mailto:contractorvaccineinfo@arlingtonva.us).

I hereby certify that all PRO COMM ELS (Contractor Name) employees and subcontractors working on Contract No. 22-DES-R-651 are fully vaccinated against COVID-19, or being tested on a weekly basis, or are exempt pursuant to a valid reasonable accommodation under state or federal law.

**Please do not include any of your employees' medical documentation, including vaccination records or test results.**

Date: 3/31/2022

Signature:  \_\_\_\_\_  
Mike Hicks

Printed Name and Title: \_\_\_\_\_  
Director

Company Name: \_\_\_\_\_

## EXHIBIT A

IFB 19-58

**AGREEMENT FOR SERVICE**

THIS AGREEMENT is effective on the 1st day of August 2019, by and between the **FAIRFAX COUNTY WATER AUTHORITY**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as "FW", and **PRO COMM E.L.S. LLC**, hereinafter referred to as the "Contractor" (collectively referred to as the "parties").

**WITNESSETH:**

In consideration of the mutual covenants set forth herein, the parties agree as follows:

The Contractor shall provide Utility Locating and Marking Services in accordance with the following, in order of precedence: this Agreement for Service ("Agreement" or "Contract"); the Contractor's bid dated May 30, 2019 (Exhibit I); and FW's Invitation For Bid dated May 8, 2019 (including all addenda) (incorporated by reference) (Exhibit II). In the event that Exhibits I and II contradict or limit this Agreement for Service, this Agreement shall prevail.

No representations, arrangements, understandings or agreements relating to the subject matter exist amongst the parties except as expressed in this Agreement.

**1.0 SCOPE OF SERVICES****1.1 Definition of Terms**

- A. A LOCATE is a Notice of Intent to Excavate received by the Contractor from VUPS for the purpose of identifying and/or marking the location of Fairfax Water underground facilities within the limits of the proposed excavation.
- B. A NOTICE OF INTENT TO EXCAVATE is a notice by any excavator of the excavator's intention to excavate in a designated location or locations.
- C. UNDERGROUND FACILITIES shall include all underground facilities owned by the Fairfax Water.
- D. VIRGINIA UTILITY PROTECTION SERVICES (VUPS)
- E. MARKING(S) is the method of identifying Fairfax Water facilities, compliant with the Virginia State Corp. Commission Division of Utility & Railroad Safety guidelines. Operators will mark their underground utility lines in accordance with the Act and the Commission's General Marking Requirements. (Rule 20VAC 5-309-110) It requires a clearly visible identification of the location of County's facilities by using paint, stakes or flags.
- F. THE ACT is the Underground Utility Damage Prevention Act, Virginia Code 56-265.14 and will be referred to as "the Act".
- G. OPERATOR. Fairfax Water is an Operator as defined in the Act.

- H. The Contractor shall receive, and respond as required, to all notifications directed to Fairfax Water in accordance with the Underground Utility Damage Prevention Act for the purpose of safeguarding Fairfax Water sub-surface facilities from excavation damage.

## 1.2 Administration

The Contractor shall provide such office services and supplies as may be required for proper performance under the contract.

Normal service hours and working days of Contractor's office shall follow those of the Virginia Utility Protection Service.

The Contractor's administrative responsibility includes, but is not limited to, receipt, recording, dispatching and closing out of any notifications received from VUPS.

## 1.3 Performance Standards

In addition to any requirements of other sections of this Contract, Contractor agrees to the following minimum performance and/or service delivery requirements.

1. Contractor shall have no less than sixteen (16) locators available to locate Fairfax Water facilities at all times during the contract period. Two (2) or more locators shall have a minimum of ten (10) years of experience in locating water, sewer, electric, fiber and traffic signals.
2. Receive and respond to all Notice of Intent to Excavate directed to the Fairfax Water in accordance with the Act. All regular tickets shall be marked according to the standards of the "Act", i.e. no later than seventy-two (72) hours after transmission of the regular ticket.
3. Contractor agrees to pay Fairfax Water for damages to Fairfax Water facilities if incorrect marking or failure to mark by the Contractor occurs.
4. Contractor agrees to contact Fairfax Water Damage Prevention Personnel immediately upon being notified that there has been damage involving any Fairfax Water owned utility.
5. Contractor shall have no less than a 99.998% accuracy rate for all locates the Contractor provides.
6. Contractor shall provide to Fairfax Water a proposed personnel list that shall contain at a minimum the names of four (4) National Utility Locating Contractors Association (NULCA) certified locators with documentation to prove their status in accordance with 56.265.19E.

7. Fairfax Water reserves the right, with the full cooperation of the Contractor, to review recorded damages, and fines recorded regarding the Contractor's performance.
8. All records associated with the performance of any resulting agreement shall be made available to authorized Fairfax Water personnel upon request.
9. All "Emergency Excavation" notices shall be responded to in accordance with applicable Virginia code.
10. All routine notices shall be completed in accordance with applicable Virginia code.
11. The Contractor shall perform all work in an excellent and workmanlike manner and maintain a positive public image.
12. The Contractor's three-month moving average "NO SHOW" rate shall not exceed 0.2%.

#### 1.4 Locating Facilities

The Contractor shall provide all tools and materials required for the safe performance of all services contained in this Contract.

The Contractor shall provide and maintain a vehicle fleet that is clearly marked with the corporate name, maintained in a clean condition, and kept in a safe condition.

#### 1.5 Records Information

Fairfax Water will provide the best available records of underground facilities and such other available information to the Contractor which may be required for proper performance of the Contract.

#### 1.6 Damage Investigation

In the event Fairfax Water facilities are damaged by a third party as a direct result of Contractor's errors or omissions to properly mark Fairfax Water's facilities in accordance with applicable Virginia code, along with any other County, municipal, or local laws governing utility protection, the Contractor shall be liable for repair or replacement expense and associated collection expense to Fairfax Water.

Upon notification that Fairfax Water's underground plant has been damaged in an area being serviced by the Contractor, Fairfax Water may direct the Contractor to conduct an on-site investigation of the incident and submit a full report of their findings to the Fairfax Water's representative within (5) five working days. Actions indicating negligence of the Contractor include, by way of illustration and not limitation, the failure to:

1. Thoroughly review all related maps, plats and "as-builts" as supplied by the County;
2. Positively identify proposed excavation area;
3. Visually assess any physical utility structures helpful in identifying underground line locations;
4. Properly use, or use fully operational and appropriate, electronic locating equipment;
5. Properly apply marks on a horizontal plane; and,
6. Mark the site within the time prescribed by Virginia Code.

### 1.7 Contractor Responsibilities

1. Perform services in a manner commensurate with the requirements of the Act. All services provided shall be subject to inspection and acceptance by Fairfax Water Damage Prevention Personnel.
2. Respond to all "Emergency Notices" as defined in the Act, (as defined in the Underground Utility Damage Prevention Act) within three (3) hours of receipt of the Emergency Notice and in accordance with the provisions of the Act.
3. Respond to all "Routine Notices" prior to the announced start time of excavation activity and in accordance with the Act, unless the excavator approves the extension of the response.
4. Abide by the Underground Utility Damage Prevention Act in its entirety.
5. Maintain all marks in accordance with the Underground Utility Damage Prevention Act.

## 2.0 TERMS AND CONDITIONS

This Agreement is subject to the following Terms and Conditions:

### 2.1 Contract Term

The contract term shall be from August 1, 2019 through July 31, 2020. The contract may be renewed for up to four additional one-year periods. Any renewal shall be based on the percentage of escalation / de-escalation in the U.S. Department of Labor, Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the twelve (12) month period ending in December of each year of the Contract.

### 2.2 Anti-Discrimination

Contractor certifies to FW that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §11-51 of the Virginia Public Procurement Act.

- A. During the performance of the contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or disabilities, except where religion, sex or national origin 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.
  2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
  3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
- B. The Contractor will include the provisions above in every subcontract or purchase order so that the provisions will be binding upon each subcontractor or vendor.
- C. Fairfax Water does not discriminate against faith-based organizations on the basis of the organization's religious character or impose conditions that (a) restrict the religious character of the faith-based organization, except as provided by law, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.
- 2.3 **Antitrust**  
By entering into a contract, the Contractor conveys, sells, assigns, and transfers to FW all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by FW.
- 2.4 **Assignment of Interest**  
The Contractor shall not assign any interest in any resulting Contract and shall not transfer any interest in the same without prior written consent of FW, which FW shall be under no obligation to grant.
- 2.5 **Availability of Funds**  
It is understood and agreed between the parties herein that FW shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.

## 2.6 Contract Changes / Change Orders

- A. No verbal agreement or conversation with any officer, agent or employee of FW either before or after the execution of any Contract resulting from this solicitation or follow-on negotiations, shall affect or modify any of the terms, conditions, specifications, or obligations contained in the solicitation, or resulting Contract. No alterations to the terms and conditions of the Contract shall be valid or binding upon FW unless made in writing and signed by the purchasing contact identified on the cover page. Contract changes shall be in writing and shall be on official FW Purchasing Department letterhead. In any event and in all circumstances, the Contractor shall be solely liable and responsible for any Contract changes, deviations, etc., made without first receiving written authorization to deviate from the Contract by the FW Project Manager.
- B. Changes can be made to the contract in any of the following ways:
1. The parties may agree in writing to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.
  2. FW may order changes within the general scope of the contract at any time by Notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give FW a credit for any savings. Said compensation shall be determined by one of the following methods:
    - a. By mutual agreement between the parties in writing; or
    - b. By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to FW's right to audit the Contractor's records and/or to determine the correct number of units independently; or
    - c. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present FW with all vouchers and records of expenses incurred and savings realized. FW shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by Notice to the Purchasing Department. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with



the changes ordered by FW or with the performance of the contract generally.

## 2.7 Delivery

- A. Contractor guarantees delivery of contract items within the timeframe specified herein. Failure to deliver within the time specified, or as amended in writing by FW, or failure to make replacements of rejected Contract items, shall constitute a breach of contract and may be grounds for a declaration of default in addition to any other remedies FW may be entitled to.
- B. Deliveries must be made by within the delivery time specified. If a delay is anticipated, the Contractor must provide as much advanced notice as possible to FW. Failure to honor a delivery schedule may result in damages to FW. The Contractor is liable for any and all costs incurred by FW due to such failures.
- C. Homeland Security Advisory System: If the Homeland Security Advisor System places the water / waste water industry in Codes Orange or Red, all deliveries shall be between the hours 7:30 a.m. and 2:00 p.m., Monday through Friday unless specially requested by the plant. As each delivery leaves the Contractor's yard, the Plant is to be advised as to the driver's name and trailer number and estimated arrival time. Upon arrival, the driver will be required to show photo ID and the trailer number will be checked and verified before delivery is allowed on site. Failure to follow these procedures may result in a refusal of the delivery at the Contractor's risk and expense.

## 2.8 Ethics in Public Contracting

Contractor hereby certifies that it has familiarized itself with Article 4 of Title 11 of the Virginia Public Procurement Act, Section 11-72 through 80, Virginia Code Annotated, and that all amounts received by it, pursuant to a contract resulting from this solicitation, are proper and in accordance therewith.

## 2.9 Examination of Records

Contractor agrees that either FW or its duly authorized representative shall have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to any resulting contract. This obligation shall expire five years after the final payment for the final service performed as a result of any and all contract(s) awarded pursuant to this solicitation, or until audited by FW, whichever is sooner. Contractor will provide reasonable access to any and all necessary documents and upon demand provide copies of documents if so required by FW or its representative(s). FW will reimburse the Contractor for any reasonable expenses it incurs as a result of such a request.

**2.10 Venue; Waiver of Jury Trial**

Notwithstanding any provision to the contrary, this solicitation and any resulting contract shall be governed in all respects by the laws of the Commonwealth of Virginia. Any dispute arising hereunder which is not otherwise resolved by the parties shall be resolved by a court of competent jurisdiction in the Commonwealth of Virginia. The Contractor and FW hereby waive any right such party may have to a trial by jury in connection with any such litigation.

**2.11 Indemnification and Responsibility for Claims and Liability**

- A. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.
- B. FW has no obligation to provide legal counsel or defense or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- C. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- D. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any loss, including Attorneys' fees arising out of any such claim.
- E. The Contractor shall indemnify, save harmless and defend FW, or any employee of FW, against liability for any suits, actions, or claims of any character whatsoever arising from or relating to the performance of the Contractor or its subcontractors under this contract.
- F. FW has no obligation to provide legal counsel or defense, or pay attorney's fees to the Contractor or its subcontractors in the event that a suit or action of any character is brought by any person not party to the contract, against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.
- G. FW has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this contract.

H. The Contractor shall pay all royalties and license fees necessary for performance of the contract. The Contractor shall defend all suits or claims for infringement of any patent rights or other proprietary rights arising from or related to performance of the resulting contract and shall save FW harmless from any loss, including Attorneys' fees arising out of any such claim.

## 2.12 Insurance

- A. Before commencing the work, the Contractor shall procure and maintain at its own expense, minimum insurance in forms and with insurance companies acceptable to FW to cover loss or liability arising out of the Work. All insurance policies must be underwritten by 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.
- B. The Contractor shall immediately notify FW of any claim or suit made or filed against the Contractor or its subcontractors regarding any matter resulting from or related to the Contractor's obligations under the contract. If such a claim or suit is brought, the Contractor will cooperate, assist, and consult with FW in the defense or investigation of any suit or action made or filed against FW as a result of or relating to the Contractor's performance under this contract.
- C. With the exception of Workers' Compensation and Employers' Liability Insurance, all additional insurance policies specified herein shall name FW as an additional insured with regard to work performed under any subsequent Contract
- D. The Contractor will provide FW with copies of certificates of insurance coverage and proof of payment of all premiums. Each certificate of insurance must include: (a) an endorsement from the insurer that certifies that the Contractor maintains the referenced policy in full force and effect; (b) where applicable, a statement indicating that FW is included as an additional insured; and (c) a provision requiring that not less than 30 days written notice will be given to FW before any policy or coverage is canceled or modified in any material respect. Without limiting the requirements set forth above, the insurance coverages will include a minimum of:
1. Workers' Compensation and Employers' Liability Insurance: Statutory requirements and benefits as required by the Commonwealth of Virginia; and
  2. Required Commercial General Liability Insurance: This insurance must be written on an "occurrence" basis and shall be endorsed to include FW as an additional insured and shall provide at a minimum the following:

- ◆ General Aggregate Limit  
\$1,000,000  
(Other than Products-Completed Operations)
  - ◆ Products-Completed Operations Aggregate Limit \$ 500,000
  - ◆ Personal & Advertising Injury Limit \$ 500,000
  - ◆ Each Occurrence Limit \$ 500,000
- For Construction Contracts:
- ◆ Directors & Officers – Errors & Omissions \$2,000,000

E. Business Automobile Liability Insurance: This insurance coverage must extend to any motor vehicles or other motorized equipment regardless of whether it is owned, hired, or non-owned and must cover Bodily Injury and Property Damage with a combined single limit of at least \$500,000 each accident. This insurance must be written in comprehensive form and must protect the Contractor and FW against claims for injuries to members of the public and/or damage to the property of others arising from the Contractor's use of motor vehicles or other equipment and must cover both on-site and off-site operations.

F. Nothing contained herein will be deemed to operate as a waiver of FW's sovereign immunity under the law.

2.13 No Waiver or Estoppel

Neither the inspection by FW nor any of its employees, nor any payment of money, nor payment for, nor acceptance of any Commodity by FW, nor any extension of time shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the Owner or of any right to damage herein provided. No waiver of any breach of this Contract shall be held to be a waiver of any other subsequent breach. All remedies provided in this Contract to FW shall be construed as cumulative and shall be in addition to each and every other remedy herein provided. Neither FW, nor any officer, employee, or authorized representative of FW, 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 by any officer, employee or authorized representative of the Owner, at any time either before or after final completion and acceptance of the Work and payment therefore from: (a) showing the true and correct classification, amount, quality, or character of the Commodities delivered, or that any determination, decision, acceptance, return certificate or payment was incorrect or was improperly made in any respect, or that the Commodities or any part thereof do not in fact conform to the requirements of the Contract; (b) demanding and recovering from the Contractor any overpayment made to the Contractor or such damages as FW may sustain

by reason of the Contractor's failure to comply with the requirements of the Contract; or (c) both of the foregoing clauses (a) and (b).

**2.14 Pass-through Price Increases and Decreases**

A. Increases: FW recognizes that the Contractor's sources of supply and transportation may pass onto the Contractor unanticipated and significant price increases. FW will consider requests by the Contractor to allow "pass-through" price increases when accompanied with sufficient proof. Only the Contractor's direct supplier's price increases will be considered. FW reserves the right to accept or reject all such requests. FW will not allow price increases that are greater than the amount passed on to the Contractor, or for a period outside of the then current contract year.

B. Decreases:

1. Pass through price increases shall cease at the end of the then current contract year and contract pricing will return to the pre-pass through rate. The contractor will be eligible for and only upon request, the annual economic price increase as defined in subsection 2.1 above.
2. Prior to the end of the then current contract year, the pass through increase shall be reduced or eliminated when and as the cause of the increase is reduced or eliminated.

C. Pass through price increases will not be a substitute for poor planning by the Contractor. Pass through increase will not be allowed for the first six months of any contract year. Price increases will be effective upon the date such a request is received in writing; and will not be made retroactive.

**2.15 Payment Clauses Required in All Contracts**

Section § 2.2-4352 of the Virginia Public Procurement Act requires the following:

A. That any contract awarded by FW include the following clauses:

1. The Contractor shall take one of the two following actions within seven days after receipt of amounts paid to the contractor by FW for work performed by any subcontractor(s) under the contract:
  - a. The Contractor shall pay its subcontractor(s) for the proportionate share of the total payment received from FW attributable to the work performed by the subcontractor under that contract; or
  - b. Notify FW and any subcontractor(s), in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. The contractor shall pay interest to the subcontractor(s) on all amounts owed by the Contractor that remain unpaid after seven days following receipt by the Contractor of payment from FW for work performed by the subcontractor under the contract, except for amounts withheld as allowed in subdivision 1.
  3. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month.
- B. The contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.
- C. A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of FW. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

#### 2.16 Payment

- A. Invoices: All invoices are to be sent directly to FW Accounts Payable department by mail, fax, or e-mail. Invoices shall include the FW Purchase Order / Contract number and the contractor's FEIN. Invoices are not to be sent to the contract Project Manager, or other departmental reps. Failure to comply may result in late payments for which FW will not be liable.
- B. Terms: All payments will be Net 30 from the date of receipt of a valid invoice at FW Finance Department. Payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- C. Invoices: The Contractor shall submit invoices for items ordered, delivered and accepted, directly to the Finance Department, to the attention of Accounts Payable. Invoices shall show FW Purchase Order or contract number and are subject to review and approval by FW Project Manager
- D. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Bid along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.

- E. Refunds: If the Contractor is declared to be in default, FW will be eligible for a full and immediate refund for all payments made to the Contractor. Partial Payments: Requests for partial payments or advanced payments must be submitted as part of the Price Offer along with a justification. FW reserves the right to accept, reject or negotiate requests for partial payments. If the request is rejected, the Bidder must waive the requirement in order to remain in consideration.
- F. Unreasonable Charges: Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, FW shall promptly notify the Contractor, in writing, as to those charges that it considers unreasonable and the basis for the determination.

2.17 Price Firm Period

Pricing shall be firm and fixed as originally offered and accepted for the first 12 months of the contract.

2.18 Price and Title

All prices are for Commodities delivered F.O.B. the facility set forth on the Purchase Order and shall represent the entire cost to FW. Title for such Commodities shall pass to FW upon receipt and acceptance thereof at FW's designated facility.

2.19 Taxes

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 identification number is 54-6025290.

2.20 Termination of Contract

- A. For Cause. In the event that the Contractor: (1) fails to deliver any Commodity or Service in accordance with the time period established therefore in the Contract; or (2) fails to furnish any Commodity or Service which conforms in all respects to the requirements of the Contract; then FW, without prejudice to any other rights or remedies it may have at law or in equity (including its right to seek damages from the Contractor), shall have the right to terminate the Contract and any outstanding Purchase Orders by issuing a written notice of termination to the Contractor. Such notice of termination shall describe in reasonable

detail the grounds for the termination and shall take effect immediately upon receipt by the Contractor.

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

B. For Convenience. FW shall have the right to terminate the Contract and/or any outstanding Purchase Orders issued hereunder at its own convenience for any reason by giving seven business days prior written notice of termination to the Contractor. In such event, the Contractor shall be paid an amount equal to the actual cost of any Commodity delivered to, and accepted by, FW and the actual cost of any equipment, goods or materials ordered by the Contractor hereunder in good faith which could not be canceled, less the salvage value thereof, provided sufficient substantiation is furnished to FW. Any subcontract entered into by the Contractor in connection with the transactions contemplated hereby shall contain a similar termination provision for the benefit of the Contractor and FW. The Contractor shall in no event be entitled to receive anticipated profits on any Commodities not yet furnished to and accepted by FW as of the effective date of any such termination.

2.21 Virginia Freedom of Information Act

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

2.22 Faith-Based Organizations

FW does not discriminate against faith-based organizations.

2.23 Immigration Reform and Control Act of 1986

By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.



## 2.24 Contractor Compliance with Safety Program

- A. The Contractor shall comply with all applicable Federal, State, and local safety programs, regulations, standards, and codes, to include though not limited to:
1. The Virginia Uniform Statewide Building Code,
  2. Building Officials & Code Administrators (BOCA) codes (together with adopted International Codes),
  3. Virginia Department of Health (VDH) regulations,
  4. Virginia Department of Environmental Quality (DEQ) regulations,
  5. Virginia-OSH (VOSH) regulations, and
  6. National Electric Code (NEC).
  7. Commonwealth of Virginia Department of Health Waterworks Regulations
  8. Virginia Department of Transportation Road and Bridge Specifications
  9. Fairfax County Special Inspections Manual
  10. Maryland Dept. of Environmental
  11. Maryland Dept. of Agriculture
- B. The Contractor shall have a written safety program that complies with all applicable OSHA and VOSH standards for General Industry regulations and a written Permit Required Confined Space Entry Program that complies with the then current VOSH Standard Confined Space Entry Standard. A copy of these programs shall be provided to FW with the Contractor's general safety program not later than seven days after contract award and before beginning work.
- C. When working in a confined space, the Contractor shall utilize only personnel trained for confined space entry and shall provide all entry equipment including atmospheric test equipment.
- D. Hard Hat Area: Contractor's employees shall wear hard hats while working outdoors at the work site.

## 2.25 Delays

- A. By the Contractor: After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by any means available to FW, including (but not limited to) liquidated damages, redeeming the Contractor's Performance Bond (or other security as agreed to by FW prior to contract award); and to recover any additional costs for obtaining a replacement contractor, lost funds and/or related expenses. This is not a limitation of FW's legal rights to recover damages due to Contractor default in any other way.

- B. By FW: The Contractor shall not be responsible for delays caused by FW, its agents, or other Contractors. To the extent that the Contractor is unable to proceed due to the actions or inaction's of FW, its agents, employees or other Contractors, the Contractor shall be granted an extension to the installation schedule equal to the documented amount of time the Contractor was prevented from performing work. The Contractor shall not be eligible for damages as a result of FW delays.

#### 2.26 Force Majeure

If a delivery is delayed by Act of God, terrorism, war, embargo, fire, or explosion not caused by the negligence or intentional act of the Contractor or his subcontractors or supplier(s), a reasonable extension of time as FW or the Member deems appropriate may be granted. Upon receipt of a written request and justification for any extension from the Contractor, FW or the Member may in its sole discretion (i) extend the time for delivery of the Commodity; (ii) suspend the Contract in whole or in part and obtain one or more of the Commodities elsewhere for a time, or (iii) terminate the Contract; all without liability to Contractor on the part of FW or Member, as the case may be. Contractor's request and justification shall be subject to such substantiation and further inquiries as FW or Member may require.

#### 2.27 Priority Customer

Contractor understands and acknowledges that FW provides services that are essential to the health and welfare of the public. To the extent that the Contractor must prioritize and/or allocate services among its customers, the requirements of FW will be honored before service is provided to a customer with no obligations with regard to the public health and welfare.

#### 2.28 Site Safety and Access

- A. FW shall have the right to deny access to the Site, or require the Contractor to remove from the Site, any individual who has exhibited violent, abusive, or threatening behavior or conduct.
- B. FW may limit, restrict, or prohibit access to areas of the Site on a permanent or temporary basis. When access to such restricted areas is required by the Contractor to perform the Work, the Contractor shall obtain permission from the FW Project Manager and shall comply with such conditions or limitations to access as may be imposed by the FW Project Manager.
- C. FW may restrict parking or require parking permits for vehicles to be brought onto the plant. The Contractor shall be responsible for

arranging transportation for its personnel to reach the job sites from whatever parking area is provided by FW.

**2.29 Superintendence by Contractor**

- A. The Contractor shall have a competent Field Supervisor, satisfactory to FW, on the job site or available by phone at all times during the progress of the Work. The Contractor shall be responsible for coordinating all portions of the Work under contract except where otherwise specified in the contract documents, and for all safety and worker health programs and practices. The Contractor shall notify the Project Manager, in writing, of any proposed change in superintendent including the reason therefore prior to making such change.
- B. The Contractor shall at all times enforce strict discipline and good order among the workers on the project. The Contractor shall not employ on the Project any unfit person, anyone not skilled in the work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, subcontractors, FW or FW's separate Contractors and their subcontractors.
- C. FW may, in writing, require the Contractor to remove from FW property, any employee FW deems to be incompetent, careless, not working in harmony with others on the site, or otherwise objectionable.

**2.30 Time Is Of The Essence**

Time is of the essence! This is a time critical project! Once started, this project must continue without delay or interruption, and unauthorized delays by the Contractor are prohibited. After prior written warning to the Contractor, FW may declare the Contractor in default for unacceptable delays. If such a declaration is made, FW reserves the unilateral right to cure the default by obtaining the services of a qualified Contractor to complete the project services and charge any additional or increased costs to the defaulted Contractor.

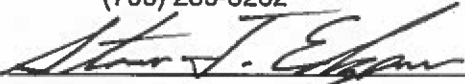
**3.0 COMPENSATION**

Unit Cost of Each Notice of Intent to Excavate Generated by Miss Utility including Up to 1,000 LF of Marking	\$8.59 per notice
Price for Additional Markings in Increments of 1,000 LF	\$13.21 LF
Surcharge for After Hours Emergencies	\$12.14 per notice
Additional Services Including Standby Services	\$79.09 hr. onsite

**FAIRFAX COUNTY WATER AUTHORITY**

8570 Executive Park Avenue  
Fairfax, VA 22031

Phone: (703) 289-6261  
Fax: (703) 289-6262

By: 

Name: Steve Edgemon

Title: General Manager

Date: 7/15/19

**PRO COMM E.L.S. LLC.**

725 Pulaski Hwy.  
Joppa, MD 21085

Phone: (443) 456-8686  
Fax: (410) 671-7305

By: 

Name: Wayne I Kacher

Title: CEO / Owner

Date: 7-12-19

EXHIBIT B

IFB 19-58

CONTRACT AMENDMENT #2

This agreement constitutes an Amendment to the Contract for Utility Locating and Marking Services between the FAIRFAX WATER ("FW") and PRO COMM E.L.S., LLC (the "Contractor") (collectively, the "parties").

In consideration of the mutual covenants set forth herein, the parties agree to amend and modify the Contract effective August 1, 2019 as follows:

Please amend the contract as follows:

Section 2.1. Contract Term

The contract period shall be from August 1, 2021 to July 31, 2022. This contract may Be renewed for two (2) additional one-year periods

In all other respects not specifically mentioned or altered by Amendment, the original Contract shall remain in full force and effect.

FAIRFAX COUNTY WATER AUTHORITY

PRO COMM E.L.S. LLC.

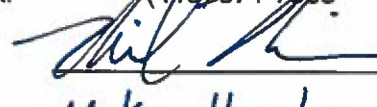
8570 Executive Park Avenue  
Fairfax, VA 22031

725 Pulaski Hwy.  
Joppa, MD 21085

Phone: (703) 289-6261  
Fax: (703) 289-6262

Phone: (443) 456-6686  
Fax: (410) 671-7305

By: 

By: 

Name: Jamie Bain Hedges

Name: Mike Hicks

Title: General Manager

Title: Director

Date: 8/3/2021

Date: 7/11/2021