

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

NOTICE OF CONTRACT AWARD

FERGUSON WATERWORKS  
13900 LOWE STREET  
CHANTILLY, VA 20151

DATE ISSUED:

9/5/2019

CURRENT REFERENCE NO:

19-149-2-ITB

CONTRACT TITLE:

STREET UTILITY CASTINGS

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**THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.**

The contract documents consist of the terms and conditions of AGREEMENT No. 19-149-2-ITB including any attachments or amendments thereto.

**EFFECTIVE DATE:** SEPTEMBER 5, 2019

**EXPIRES:** SEPTEMBER 30, 2020

**RENEWALS:** FOUR (4) ONE (1) YEAR RENEWAL OPTIONS FROM OCTOBER 1, 2020 – SEPTEMBER 30, 2024

**COMMODITY CODE(S):** 2600900, 4004600, 6653400

**LIVING WAGE:** N

**ATTACHMENTS:**

AGREEMENT No. 19-149-1-ITB

**EMPLOYEES NOT TO BENEFIT:**

**NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.**

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**VENDOR CONTACT:** PAT BURKE

**VENDOR TEL. NO.:**

(703) 576-4395

**EMAIL ADDRESS:**

PAT.BURKE@FERGUSON.COM

**COUNTY CONTACT:** JEREMY HASSAN

**COUNTY TEL. NO.:**

(703) 228-3647

**COUNTY CONTACT EMAIL:**

JHASSAN@ARLINGTONVA.US

## **AGREEMENT NO. 19-149-2-ITB**

THIS AGREEMENT is made, on the date of execution by the County, between Ferguson Enterprises, LLC dba Ferguson Waterworks, 13900 Lowe Street, Chantilly, Virginia 20151 ("Contractor") a Virginia limited liability company authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

### **1. CONTRACT DOCUMENTS**

The "Contract Documents" consist of the bid of the successful Bidder (hereinafter "Contractor") and Arlington County (hereinafter "County") Invitation to Bid No. 19-149-2-ITB.

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 party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

### **2. SCOPE OF WORK**

The Contractor agrees to perform the services described in the Contract Documents (the "Work"), more particularly described in the Scope of Services included with the Invitation to Bid. The primary purpose of the Work is to provide composite, plastic castings and related items on an as-needed basis. 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 its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

### **3. CONTRACT TERM**

Time is of the essence. The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than September 30, 2020 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a bilateral Notice of Award, authorize continuation of the Agreement under the same contract prices for not more than (4) additional 12-month periods, from October 1, 2020 to September 30, 2024 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

### **4. CONTRACT PRICING WITH OPTIONAL PRICE ADJUSTMENTS**

The Contract Amount/unit price(s) will remain firm until September 30, 2020 ("Price Adjustment Date"). To request a price adjustment, the Contractor or the County must submit a written request to the other party not less than 60 days before the Price Adjustment Date. Adjustments to the Contract Amount/unit price(s) will not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the 12-month period ending in September of each year of the Contract.

Any Contract Amount/unit price(s) that result from this provision will become effective the day after the Price Adjustment Date and will be binding for 12 months. The new Price Adjustment Date will be 12 months after the price adjustment.

If the Contractor and the County have not agreed on a requested adjustment by 30 days before the Price Adjustment Date, the County may terminate the Contract, whether or not the County has previously elected to extend the Contract's term.

**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 requesting the work under this Contract. However, it shall be the responsibility of the Contractor to manage the details of the execution and performance of its work pursuant to the Contract Documents.

**6. ADDITIONAL SERVICES**

The Contractor shall not be compensated for any goods or services provided except those included in the Scope of Work/Specifications of the solicitation and included in the Contract Amount unless those goods or services are covered by a written amendment to this Contract signed by the County and the Contractor and a County purchase order is issued covering the expected cost of such services.

**7. PAYMENT TERMS**

Payment terms will be recorded by the County as Net thirty (30) days. The County will pay the Contractor within thirty (30) calendar days after the date of receipt of a correct, as determined by the Project Officer, invoice approved by the Project Officer describing completed work which is reasonable and allocable to the Contract, or the date of receipt of the entire order, or the date of acceptance of the work which meets the Contract requirements, whichever is later. Payments will be made by the County for goods furnished, delivered, inspected, and accepted upon receipt of invoices submitted on the date of delivery of service, subject to applicable payment terms. The number of the County Purchase Order pursuant to which authority services have been performed shall appear on all invoices. Invoices shall be submitted in duplicate. Unless otherwise specified herein, payment shall not be made prior to delivery and acceptance of the entire order by the County.

**8. PAYMENT OF SUBCONTRACTORS**

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

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

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

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

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

**9. NO WAIVER OF RIGHTS**

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

**10. NON-APPROPRIATION**

All 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 ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

**11. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR**

During the Contract Term, the Contractor will furnish all of the goods or services described in the Contract Documents, if so requested by the County. The County will have no obligation to the Contractor if no, or fewer, items or services are required or requested by the County. Any quantities which are included in the Contract Documents are the present expectations of those who are planning for the County for the period of the Contract. The amount is only an estimate and the Contractor understands and agrees that the County is under no obligation to the Contractor to buy that amount, or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The Contractor further understands that the County may require goods and/or services in excess of the estimated annual contract amount and that such excess shall not give rise to any claim for compensation other than at the unit prices and/or rates set forth in this Contract. Further, the items or services covered by this contract may be available or become available under other County contracts, and in analyzing its needs, the County may determine that it is in its best interest to procure the items or services through such another contract. Therefore, the County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this contract.

**12. COUNTY PURCHASE ORDER REQUIREMENT**

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

**13. DELIVERY**

All goods are purchased F.O.B. destination in Arlington County as designated in this Contract. All costs for handling and transportation charges to the designated point of delivery shall be borne by the Contractor. Transportation, handling and all related charges are included in the unit prices or discounts submitted by the Contractor with its bid.

**14. DAMAGE TO PROPERTY**

Any damage, as determined by the Project Officer, to the real or personal property, whether owned by the County or others, resulting from the Work performed under this Contract shall be timely repaired or replaced to the County's satisfaction at the Contractor's expense. The County will perform the repairs unless the County agrees that such repairs will be made by the Contractor. Any such Contractor repairs will be made within ten (10) days of the date of damage to the satisfaction of the County. All costs of the repair performed by the County shall be deducted from the Contractor's final payment.

**15. OSHA REQUIREMENTS**

The Contractor certifies that all material supplied or used under this Contract meets all Occupational Safety and Health Administration ("OSHA") requirements, both Federal and those of the Commonwealth of Virginia; and further certifies that, if the material delivered or used in the performance of the work is found to be deficient in any of the applicable state or federal occupational safety and health requirements, all costs necessary to bring the material into compliance with the requirements shall be borne by the Contractor.

**16. FAILURE TO DELIVER**

If the Contractor fails to deliver goods or services in accordance with the Contract terms and conditions, the County, after notice to the Contractor, may procure the goods or services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. The County shall be entitled to offset such costs against any sums owed by the County to the Contractor. However, if public necessity requires the use of nonconforming materials or supplies, they may be accepted at a reduction in price to be determined solely by the County.

**17. UNSATISFACTORY WORK**

If any of the work done, or material, goods, or equipment provided, by the Contractor is unsatisfactory to the County, the Contractor shall, on being notified by the County, immediately remove at the Contractor's expense such unsatisfactory work, material, goods, or equipment and replace the same with work, material, goods, or equipment satisfactory to the County. In the event the Contractor fails within fifteen (15) days after receipt of written notice to remove improper or unsuitable work, material, goods, or equipment and replace it with suitable and satisfactory work, material, goods, or equipment, the County shall have the right, but not the obligation, to remove or replace the rejected work, material, goods, or equipment at the expense of the Contractor. This paragraph applies during the Initial Contract Term, any Subsequent Contract Term, and during any warranty or guarantee period. At its discretion, the County shall be entitled to offset such expense against any sums owed by the County to the Contractor under this Contract. If the Project Officer and the County deem it expedient not to require correction or replacement of the work which has not been done in accordance with the Contract, an appropriate adjustment to the Contract Amount may be made therefor.

**18. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED**

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.
- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

**19. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

**20. DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR**

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

**21. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE**

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

If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure such failure(s) within at least fifteen (15) days before termination of the Contract takes effect ("Cure Period"). If the Contractor fails to cure within the Cure Period, or as otherwise specified in the notice, the Contract may be terminated for the Contractor's failure to provide satisfactory Contract performance. Upon such termination, the

Contractor may apply for compensation for Contract services satisfactorily performed by the Contractor and allocable to the Contract and accepted by the County prior to such termination unless otherwise barred by the Contract ("Termination Costs"). In order to be considered, such request for Termination Costs, with all supporting documentation, must be submitted to the County Project Officer within fifteen (15) days after the expiration of the Cure Period. The County may accept or reject, in whole or in part, the application for Termination Costs and notify the Contractor of same within a reasonable time thereafter.

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

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

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

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

## **22. TERMINATION FOR THE CONVENIENCE OF THE COUNTY**

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

After receipt of a notice of termination and except as otherwise directed, the Contractor shall stop all designated work on the date of receipt of the notice of termination or other date specified in the notice;

place no further orders or subcontracts for materials, services or facilities except as are necessary for the completion of such portion of the work not terminated; immediately transfer all documentation and paperwork for terminated work to the County; and terminate all vendors and subcontracts and settle all outstanding liabilities and claims.

**23. INDEMNIFICATION**

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

**24. CONFIDENTIAL INFORMATION**

The Contractor, and its employees, agents, and subcontractors, hereby agree to hold as confidential all County information obtained as a results of its Work under this Contract. Confidential information includes, but is not limited to, nonpublic personal information, personally identifiable health information, social security numbers, addresses, dates of birth, other contact information or medical information about a person, information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, expertise and any information entrusted to any affiliate of the parties. The Contractor shall take reasonable measures to ensure that all of its employees, agents, and subcontractors are informed of, and abide by, this requirement.

**25. ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as any state or federal law related to ethics, conflicts of interest, or bribery, including, by way of illustration and not limitation, the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its offer was made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other bidder, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

**26. COUNTY EMPLOYEES**

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



**27. FORCE MAJEURE**

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

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

**28. AUTHORITY TO TRANSACT BUSINESS**

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

**29. RELATION TO THE COUNTY**

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

**30. ANTITRUST**

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

**31. AUDIT**

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

**32. ASSIGNMENT**

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

**33. AMENDMENTS**

Unless otherwise specified herein, this Contract shall not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

**34. ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES**

Notwithstanding any provision to the contrary herein, no provision of the Arlington County Purchasing Resolution or any applicable County policy is waived in whole or in part.

**35. DISPUTE RESOLUTION**

All disputes arising under this Agreement, or its interpretation, whether involving law or fact, extra work or extra compensation or time, and all claims for alleged breach of Contract shall be submitted in writing to the Project Officer for decision at the time of the occurrence or beginning of the work upon which the claim is based, whichever occurs first. Any such claims shall state the facts surrounding it in sufficient detail to identify it together with its character and scope. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than sixty (60) days after final payment. The time limit for final written decision by the County Manager in the event of a contractual dispute, as that term is defined in the Arlington County Purchasing Resolution, is fifteen (15) days. Procedures for considering contractual claims, disputes, administrative appeals, and protests are contained in the Purchasing Resolution, which is incorporated herein by reference. A copy of the Arlington County Purchasing Resolution is available upon request from the Office of the Purchasing Agent. The Contractor shall not cause a delay in the Work pending a decision of the Project Officer, County Manager, County Board, or a court of law.

**36. 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 hereto shall be in the Circuit Court for Arlington County, Virginia, and in no other court. In performing the Work under this Contract, the Contractor shall comply with applicable federal, state, and local laws, ordinances and regulations.

**37. ARBITRATION**

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

**38. NONEXCLUSIVITY OF REMEDIES**

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

**39. NO WAIVER**

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

**40. SEVERABILITY**

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

**41. NO WAIVER OF SOVEREIGN IMMUNITY**

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

**42. SURVIVAL OF TERMS**

In addition to any numbered section in this Agreement which specifically state that the term or paragraph survives the expiration or termination of this Contract, the following sections if included in this Contract also survive: INDEMNIFICATION; RELATION TO COUNTY; OWNERSHIP AND RETURN OF RECORDS; AUDIT; COPYRIGHT; WARRANTY; AND CONFIDENTIAL INFORMATION.

**43. HEADINGS**

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

**44. AMBIGUITIES**

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

**45. ATTORNEYS' FEES**

In the event that the County prevails in any legal action or proceeding brought by the County to enforce any provision of this Contract, the Contractor will pay the County's reasonable attorney's fees and expenses.

**46. NOTICES**

Unless otherwise provided herein, all legal 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:**  
Pat Burke, Municipal Sales  
Ferguson Waterworks  
13900 Loew Street  
Chantilly, VA 20151

**TO THE COUNTY:**

Jeremy Hassan, Project Officer  
Arlington County Department of Environmental Services  
Water, Sewer, Streets Bureau  
4200 28<sup>th</sup> Street S.  
Arlington, VA 22206

AND

Sharon Lewis, Purchasing Division Chief  
Arlington County, Virginia  
2100 Clarendon Boulevard, Suite 500  
Arlington, Virginia 22201

**47. NON-DISCRIMINATION NOTICE**

Arlington County does not discriminate against faith-based organizations.

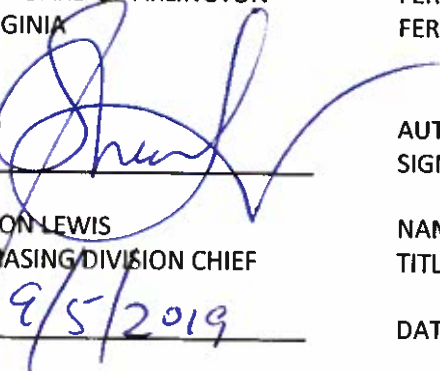
WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON  
COUNTY, VIRGINIA

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

NAME: SHARON LEWIS  
TITLE: PURCHASING DIVISION CHIEF

DATE: \_\_\_\_\_



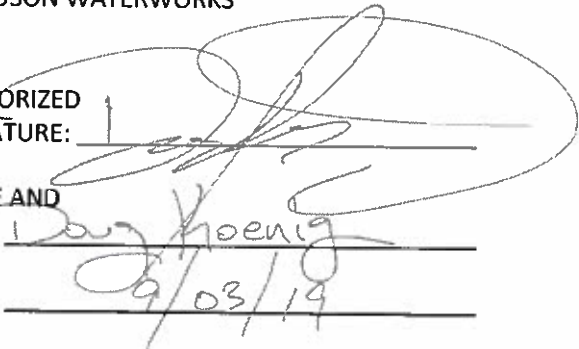
9/5/2019

FERGUSON ENTERPRISES, LLC DBA  
FERGUSON WATERWORKS

AUTHORIZED  
SIGNATURE: \_\_\_\_\_

NAME AND  
TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



Doug Hoening  
9/03/19

## II. SPECIFICATIONS

The County will receive bids for the provision of various municipal iron, composite, plastic castings and related on an as-needed basis, for up to five (5) years.

### Requirements:

1. Street castings:
  - a. Shall be heavy-duty; heavy-duty is defined as a frame and cover that can withstand a large volume of vehicle traffic (H-22 loading). Sidewalk castings (H-20 loading) shall be for light traffic.
  - b. Dimensions and treads shall be provided as shown on the attached drawings.
  - c. Iron Frames and covers shall be constructed of gray or ductile iron conforming to ASTM A-48 and A-536. Frames and covers shall have machine bearing surfaces to prevent rocking rattling under traffic. Bolted manhole covers shall be bolted and waterproof, as shown on the standard details (drawings).
2. Composite Casting Bids:

To meet the requirements of the County, a set of technical drawings and all other pertinent documentation shall be submitted by the Bidder with this portion of the bid for each size bid.
3. Castings will be purchased on an as-needed basis. Delivery of the initial order shall be made within 60 calendar days after receipt of order. Deliveries shall be addressed to: 4202 28<sup>th</sup> South Street Arlington, VA 22206.
4. Deliveries of all subsequent orders shall be made within 60 calendar days after receipt of order. The County will stock only a minimal quantity of frequent-use castings. Minimal is defined as a quantity of 40 or more.

### Pricing:

1. Bidders shall provide prices for all items in each category (A through E) of Attachment A - Pricing Schedule worksheets for either iron, composite (3 different size) and/or plastic castings categories; partial bids (within each category) will not be considered and will be subject to rejection.
2. Prices for special castings required during the contract term will be negotiated or bid separately at the County's discretion.
3. Miscellaneous types of castings and related items that are not specifically mentioned or listed on this solicitation, may be requested under this Contract, when necessary to meet the needs of the County. Such items shall be made available to the County at the discount specified by the Contractor on the Bid Form.

### Award:

The Award will be made to the lowest responsive and responsible Bidder for each of the five (5) categories, one for iron castings, three separate Awards for composite casting sections, and one for plastic castings. **Partial bids within a category will not be considered.**

ARLINGTON COUNTY, VIRGINIA

INVITATION TO BID NO.19-149-ITB

BID FORM

**SUBMIT TWO (2) FULLY-COMPLETED AND SIGNED BID FORMS TO THE OFFICE OF THE BID CLERK, SUITE 511, 2100 CLARENDON BLVD., ARLINGTON, VIRGINIA 22201 (ONE FORM SHALL CONTAIN AN ORIGINAL LONGHAND SIGNATURE; THE OTHER SHALL BE A PHOTOCOPY OF THE SIGNED ORIGINAL)**

BIDS WILL BE OPENED AT 2:00PM ON AUGUST 14, 2019

FOR PROVIDING VARIOUS MUNICIPAL IRON, COMPOSITE, PLASTIC CASTINGS AND RELATED ITEMS ON AN AS-NEEDED BASIS, FOR UP TO FIVE (5) YEARS (ONE BASE YEAR WITH FOUR OPTIONAL, 12-MONTH RENEWAL YEARS)

THE FULL LEGAL NAME OF THE ENTITY SUBMITTING THIS BID MUST BE WRITTEN IN THE SPACE BELOW. THIS BID FORM AND ALL OTHER DOCUMENTS THAT REQUIRE A SIGNATURE MUST BE FULLY AND ACCURATELY COMPLETED AND SIGNED BY A PERSON WHO IS AUTHORIZED TO BIND THE BIDDER, OR THE BID MAY BE REJECTED:

Ferguson Enterprises, LLC dba  
 SUBMITTED BY: Ferguson Works  
 (legal name of entity)

AUTHORIZED SIGNATURE: [Signature]

PRINT NAME AND TITLE: Doug Kenig General Manager

ADDRESS: 13900 Lewis St

CITY/STATE/ZIP: Charlottesville, VA 22901

TELEPHONE NO.: 703-576-4395 E-MAIL ADDRESS: Pat.Burke@ferguson.com

THIS ENTITY IS INCORPORATED IN: Virginia

THIS ENTITY IS A: (check the applicable option)

CORPORATION	<input checked="" type="checkbox"/>	LIMITED PARTNERSHIP	<input type="checkbox"/>
GENERAL PARTNERSHIP	<input type="checkbox"/>	UNINCORPORATED ASSOCIATION	<input type="checkbox"/>
LIMITED LIABILITY COMPANY	<input type="checkbox"/>	SOLE PROPRIETORSHIP	<input type="checkbox"/>

IS BIDDER AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH OF VIRGINIA? YES  NO

IDENTIFICATION NO. ISSUED TO THE ENTITY BY THE  
SCC:

02288454

Any Bidder exempt from Virginia State Corporation Commission (SCC) authorization requirement must include a statement with its bid explaining why it is not required to be so authorized.

VIRGINIA CONTRACTOR'S LICENSE NUMBER:

1504245759

ENTITY'S DUN & BRADSTREET D-U-N-S NUMBER: (if available)

008955171

IS YOUR FIRM OR ANY OF ITS PRINCIPALS CURRENTLY  
DEBARRED FROM SUBMITTING BIDS TO ARLINGTON COUNTY,  
VIRGINIA, OR ANY OTHER STATE OR POLITICAL SUBDIVISION?

YES  NO

BIDDER STATUS: MINORITY OWNED:  WOMAN OWNED:  NEITHER:

THE UNDERSIGNED UNDERSTANDS AND ACKNOWLEDGES THE FOLLOWING:

THE OFFICIAL COPY OF THE SOLICITATION DOCUMENTS, WHICH INCLUDES ANY ADDENDA, IS THE ELECTRONIC COPY THAT IS AVAILABLE FROM THE COMMONWEALTH OF VIRGINIA'S eVA WEBSITE AT: [HTTP://WWW.EVA.VIRGINIA.GOV.](http://www.eva.virginia.gov)

POTENTIAL BIDDERS ARE RESPONSIBLE FOR DETERMINING THE ACCURACY AND COMPLETENESS OF ALL SOLICITATION DOCUMENTS THEY RECEIVE FROM ANY SOURCE, INCLUDING THE COUNTY.

Bidder's must complete Attachment A – Pricing Schedule AND record the bid totals below. This sheet, BID FORM must be signed as the Bidder's affirmation of the Attachment A and returned with the bid package. FAILURE TO RECORD THE TOTALS BELOW AND TO COMPLETE ATTACHMENT A WILL RENDER YOUR BID NON-RESPONSIVE.

TOTALS: (Enter "N/A" or "No Bid" for any sections that are not being bid on.)

A. IRON BID TOTAL AMOUNT:	<u>\$181,526.00</u>	Total Bid <u>\$619,276.00</u>
B. COMPOSITE BID #1 TOTAL AMOUNT:	<u>\$50,000.00</u>	
C. COMPOSITE BID #2 TOTAL AMOUNT:	<u>\$37,250.00</u>	
D. COMPOSITE BID #3 TOTAL AMOUNT:	<u>\$188,000.00</u>	
E. PLASTIC BID TOTAL AMOUNT:	<u>\$162,500.00</u>	
F. PERCENTAGE DISCOUNT OFF THE LIST PRICES FOR ITEMS NOT LISTED ON THE BID FORM:	<u>25%</u>	

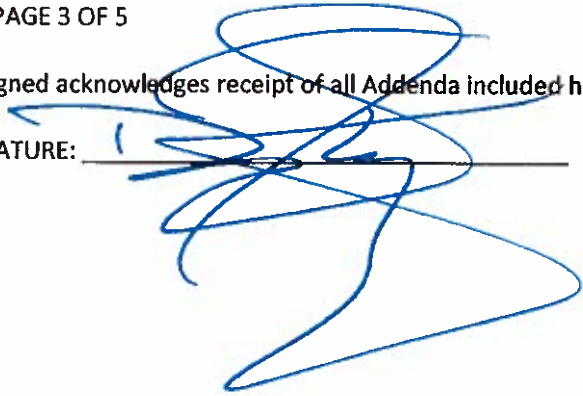
Bidder must enter a percent discount (if none, enter 0%).

BIDDER NAME: Ferguson Enterprises, LLC dba Ferguson Waterworks

BID FORM, PAGE 3 OF 5

The undersigned acknowledges receipt of all Addenda included herein:

AUTH. SIGNATURE: \_\_\_\_\_

A large, stylized handwritten signature in blue ink is written over a horizontal line. The signature is highly cursive and loops around the line, extending significantly above and below it.

BIDDER NAME: Ferguson Enterprises LLC dba Ferguson Waterworks



**TRADE SECRETS OR PROPRIETARY INFORMATION:**

Trade secrets or proprietary information submitted by a Bidder in connection with a procurement transaction will not be subject to public disclosure under the Virginia Freedom of Information Act. Pursuant to Section 4-111 of the Arlington County Purchasing Resolution, however, a Bidder seeking to protect submitted data or materials from disclosure must, before or upon submission of the data or materials, identify the data or materials to be protected and state the reasons why protection is necessary.

Please mark one:

- No, the bid that I have submitted does not contain any trade secrets and/or proprietary information.
- Yes, the bid that I have submitted does contain trade secrets and/or proprietary information.

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

Drawings from Trumbull Manufacturing and  
Nival requests that the drawings submitted  
with this bid be considered confidential

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

Trumbull Manufacturing invests considerable  
time in designing its products and creating  
engineering drawings. Trumbull requests that these  
drawings be used by Arlington County for bid purposes only.

If you fail above to identify the data or materials to be protected or to state the reason(s) why protection is necessary, you will not have invoked the protection of Section 4-111 of the Purchasing Resolution. Accordingly, upon the award of a contract, the bid will be open for public inspection consistent with applicable law.

BIDDER NAME: Ferguson Enterprises, LLC dba Ferguson Waterworks

CERTIFICATION OF NON-COLLUSION: The undersigned certifies that this bid is not the result of or affected by (1) any act of collusion with another person engaged in the same line of business or commerce (as defined in Virginia Code §§ 59.1-68.6 *et seq.*) or (2) any act of fraud punishable under the Virginia Governmental Frauds Act (Virginia Code §§ 18.2-498.1 *et seq.*).

CONTACT PERSON AND MAILING ADDRESS FOR DELIVERY OF NOTICES

Provide the name and address of the person who is designated to receive notices and other communications regarding this solicitation. Refer to the "Notices" section in the draft Contract Terms and Conditions for information regarding delivery of notices.

NAME:

Pat Burke

ADDRESS:

Ferguson Waterworks, 13900 Lowb St.  
Chantilly, VA 20151

E-MAIL:

Pat.Burke@ferguson.com

Preferred <sup>\*</sup>email

BIDDER NAME:

Ferguson Enterprises, LLC dba Ferguson Waterworks

A. Iron Bid

#	Item	County Specification / Drawing Number	Estimated Quantity	Unit Price	Extended Price	Subtotal
A-1	Sanitary Sewer Manhole - 24" Frame & Cover Assembly Cover Only	MHC-1 / DWG S-3.0	600	\$ 203.00	\$ 121,800.00	\$ 121,895.00
			1	\$ 95.00	\$ 95.00	
A-2	Sanitary Sewer Manhole - 24" Bolted Frame & Cover Assembly Cover Only	MHC-2 / DWG S-3.1	15	\$ 174.00	\$ 2,610.00	\$ 2,686.00
			1	\$ 76.00	\$ 76.00	
A-3	Sanitary Sewer Manhole - 36" Bolted Frame & Cover Assembly Cover Only	MHC-3 / DWG S-3.2	15	\$ 550.00	\$ 8,250.00	\$ 8,533.00
			1	\$ 283.00	\$ 283.00	
A-4	Water Meter Box - 22" x 28" Frame & Cover Assembly (for 24" I.D.) Cover Only	DWG W-9.7	50	\$ 120.00	\$ 6,000.00	\$ 6,065.00
			1	\$ 65.00	\$ 65.00	
A-5	Water Meter Box - 24" x 40" Frame & Cover Assembly (for 36" I. D.) Cover Only	DWG W-9.8	25	\$ 287.00	\$ 7,175.00	\$ 7,250.00
			1	\$ 75.00	\$ 75.00	
A-6	Water Meter Box - 12" Spiked Frame And Cover (to fit 18-20" tiles) Cover Only	Baltimore MBX-3437	50	\$ 32.00	\$ 1,600.00	\$ 1,612.00
			1	\$ 12.00	\$ 12.00	
A-7	Water Meter Vault - 36" x 54" Frame & Cover Assembly Cover Only	DWG W-9.9	40	\$ 425.00	\$ 17,000.00	\$ 17,140.00
			1	\$ 140.00	\$ 140.00	
A-8	Catch Basin - 21" Frame & Cover Assembly Cover Only	DWG D-1.13	50	\$ 100.00	\$ 5,000.00	\$ 5,055.00
			1	\$ 55.00	\$ 55.00	
A-9	Catch Basin / Drop Inlet - 30" x 30" Grate & Frame Assembly Grate Only	VDOT DI-1	15	\$ 267.00	\$ 4,005.00	\$ 4,195.00
			1	\$ 190.00	\$ 190.00	
A-10	Storm Sewer Manhole - 24" Frame & Cover Assembly Cover Only	MH1 / DWG D-3.6	35	\$ 200.00	\$ 7,000.00	\$ 7,095.00
			1	\$ 95.00	\$ 95.00	

<b>Bid A Total (Sum of Extended Prices for All the Items Above)</b>	<b>\$ 181,526.00</b>
<b>Delivery (Number of Days After the Receipt of Notice of Order)</b>	<b>15-45 Days</b>

Bidder- Ferguson Enterprises, LLC Dba Ferguson Waterworks

**B. Composite Bid #1**

#	Item	Estimated Quantity	Unit Price	Extended Price	Subtotal
B-1	1.5" Water Meter - 21.75" x 1.25" Cover Only - Composite (Drop-in)	500	\$ 100.00	\$ 50,000.00	\$ 50,000.00
<b>Bid B Total (Sum of Extended Prices for All the Items Above)</b>				\$ (50,000.00)	
<b>Delivery (Number of Days After the Receipt of Notice of Order)</b>					15-45 days

Bidder- Ferguson Enterprises, LLC Dba Ferguson Waterworks

BIDDER NAME:

**B. Composite Bid #2**

#	Item	Estimated Quantity	Unit Price	Extended Price	Subtotal
C-1	2" Water Meter - 23.75" x 1" Cover Only - Composite <b>(Drop-in)</b>	250	\$ 149.00	\$ 37,250.00	\$ 37,250.00
<b>Bid C Total (Sum of Extended Prices for All the Items Above)</b>					<b>\$ (37,250.00)</b>
<b>Delivery (Number of Days After the Receipt of Notice of Order)</b>					<b>15-45 Days</b>

Bidder- Ferguson Enterprises, LLC Dba Ferguson Waterworks

BIDDER NAME:

**B. Composite Bid #3**

#	Item	Estimated Quantity	Unit Price	Extended Price	Subtotal
D-1	Large Water Meter Vault - 35.75" X 1.5" Cover Only - Composite <u>(Drop-in)</u>	400	\$ 470.00	\$ 188,000.00	\$ 188,000.00
<b>Bid D Total (Sum of Extended Prices for All the Items Above)</b>					\$ (188,000.00)
<b>Delivery (Number of Days After the Receipt of Notice of Order)</b>					15-45 Days

Bidder- Ferguson Enterprises, LLC Dba Ferguson Waterworks

BIDDER NAME:

**B. Plastic Bid**

#	Item	Estimated Quantity	Unit Price	Extended Price	Subtotal
E-1	Small Water Meter - 12.625" x <u>17/32"</u> Type AC - Cover Only - Plastic ( <u>Worm gear</u> )	5000	\$ 18.00	\$ 90,000.00	\$ 162,500.00
E-2	Small Water Meter - <u>10.375"</u> x <u>5/8"</u> Type A - Cover Only - Plastic ( <u>Worm gear</u> )	5000	\$ 14.50	\$ 72,500.00	
<b>Bid E Total (Sum of Extended Prices for All the Items Above)</b>					<b>\$ (162,500.00)</b>
<b>Delivery (Number of Days After the Receipt of Notice of Order)</b>					<b>15-45 Days</b>

Bidder- Ferguson Enterprises, LLC Dba Ferguson Waterworks

BIDDER NAME: