



General Conditions

1. Definitions and Terminology

- A. *Contractor*—The individual or entity with whom Owner has awarded the Contract. The term “Bidder” is used herein to refer to the individual or entity to whom the Owner intends to award the Contract.
- B. *Contract Documents*—The Contract Documents include the purchase order, the Bid Form (which identifies all addenda), the General Conditions, the Supplementary Conditions, Change Orders (if any, issued during construction), Payment Bond (if required), and Performance Bond (if required). Note the Supplementary Conditions may list additional documents, such as specifications and drawings, which are included under the term “Contract Documents.”
- C. *Contract Price*—The amount stated on the purchase order, which may reference the bid, payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents.
- D. *Contract Times*—The number of days or the dates stated in the Contract Documents to achieve milestones (if any) and completion of the Work.
- E. *Engineer*—The individual or entity that prepared the drawings and/or specifications for the project.
- F. *Project*—The total construction or provision of which the Work to be performed under the Contract Documents may be the whole, or a part.
- G. *Owner*—The Loudoun County Sanitation Authority, also known as Loudoun Water, whose address is 44865 Loudoun Water Way, Ashburn, Virginia 20147.
- H. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
- I. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
- J. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, tools, equipment, appurtenances, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

2. Preliminary Matters

- A. *Insurance; Bonds.* Upon receipt of the Contractor's certificate of insurance and payment and performance bonds (if bonds are required), the Owner will issue a purchase order to the Contractor.
- B. *Commencement of Contract Times.* The Contract Times will commence on the day specified in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after issuance of the purchase order.
- C. *Before Commencing Work.* Before commencing work or providing materials or equipment to the Site, Contractor and Owner shall meet to discuss schedules and coordination of the Work. Contractor shall provide its project schedule that shows dates and durations for the Work, and its schedule of values that shows the values for the various components of the Work.
- D. *Electronic Transmittals.* All requests for clarification (RFCs), shop drawings, submittals, and change orders shall be submitted electronically through ProCore®, the Owner's web-based project management software.

3. Contract Documents

- A. *Conflict Resolution.* In resolving inconsistencies or discrepancies among two or more sections of the Contract Documents, precedence shall be given in the following order: Change Orders, Supplementary Conditions, General Conditions, Bid Form, Specifications, Drawings, Loudoun Water's *Engineering Design Manual* (EDM), Escrow Agreement, and the purchase order. Figure dimensions shall take precedence over scale dimensions.
- B. *Intent.* The intent of the Contract Documents is to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner. Further, the Contract Documents are complementary; what is required by one is as binding as if required by all.
- C. *Standards, Codes, Laws, and Regulations.* Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, laws or regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents. All Work shall conform to the *Engineering Design Manual* (EDM), which is available at www.loudounwater.org.
- D. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify all figures therein and all field measurements. Contractor shall promptly give notice to Owner and Engineer of

any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby by timely submitting a request for clarification.

4. Site Conditions

- A. If Contractor believes that any subsurface condition; physical condition; or hazardous environmental condition, including, but not limited to asbestos, PCBs, or hydrocarbons is uncovered or revealed, and same could not have been discovered previously in the exercise of due diligence, Contractor shall stop the work immediately, secure the area, and notify the Owner. For materials considered hazardous, the Owner will have the material identified and will provide direction to the Contractor. Any additional cost and any additional time required for the removal will be included in a change order, exclusive of the damages for the delay. For other (non-hazardous) Site conditions, the Owner will provide direction accordingly, which may include a change order for additional change to Contract Price and Contract Time.
- B. If asbestos abatement is included as a part of the Work, the Contractor shall ensure the asbestos abatement work is accomplished by a licensed asbestos subcontractor. The asbestos subcontractor shall name the Owner as an additional insured on its liability insurance policy. The Contractor shall provide a copy of the insurance policy to the Owner.
- C. *Hazardous Chemical Communication Program.* Pursuant to 29 CFR1910.119, the Owner advises that certain Owner facilities have hazardous chemicals, and Contractor personnel may be exposed to these hazardous chemicals while working at the Owner's facilities. A written Hazard Communication Program has been developed to inform personnel of the specific hazardous chemicals at the site, and the related safety information, including protective measures, precautions, and procedures that are to be implemented. The Hazard Communications Program, including the safety data sheets for each hazardous chemical, is available and may be obtained upon request. The Contractor is responsible for communicating the information contained in the safety data sheets to its personnel.

5. Bonds and Insurance

- A. *Performance and Payment Bonds.* For all projects where the Contract Price is greater than \$200,000, Bidder shall—within five days of the notice of award—furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until completion of the correction period, except as provided otherwise by the Contract Documents or other Laws or Regulations. The surety shall be licensed to transact business in Virginia. Standard bond forms, if required, will be on forms included in the Contract Documents.
- B. *Insurance—General Requirements.* By submitting its bid under this solicitation, the Bidder certifies that, if advised of the Owner's intent to award the Contract to

the Bidder, the Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of this Article 5 and the Supplementary Conditions and will provide its evidence of insurance prior to the issuance of the purchase order. The policies of insurance required shall:

1. include at least the specific coverages required;
2. be written for not less than the limits specified, or those required by Laws or Regulations, whichever is greater;
3. cover claims under workers' compensation, disability benefits, and other similar employee benefit acts;
4. cover claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
5. cover claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
6. cover claims for damages insured by personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
7. cover claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
8. cover claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
9. cover claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property
10. be written on an occurrence basis, stating that coverage is primary to all other coverage Owner may possess;
11. for automobile liability insurance, be written with a symbol "1" to provide for owned, hired, and non-owned coverage;
12. for excess liability insurance, be written such that the insurance is excess over automobile liability, general liability, and employer's liability, and shall, at a minimum, follow the coverage form in the underlying primary policies;
13. remain in effect at least until the Work is complete, and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;

14. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable;
 15. include all necessary endorsements to support the stated requirements; and
 16. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - a. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, shall:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.
- D. *Builder's Risk and Other Property Insurance*. Builder's Risk or other property insurance requirements, if necessary, will be given in the Supplementary Conditions.
- E. *Property Losses; Waiver of Rights*
1. All policies will protect Owner, Contractor, Subcontractors, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Contractor hereby agrees to waive any rights Contractor may have against the Owner, Engineer, Subcontractor(s), suppliers of any portion of the Work, and

any bondholders, for any damage to the Work, even if caused by the negligence of the Owner, Engineer, Subcontractor(s), suppliers of any portion of the Work, or any bondholders.

2. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

F. Receipt and Application of Insurance Proceeds

1. Any insured loss under the policies of insurance required herein will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and the requirements herein. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. The Contractor shall pay each Subcontractor a just share of any insurance monies received by the Contractor and by appropriate agreement, written where legally required for validity, and shall require each Subcontractor to make payments to each sub-Subcontractor in a similar manner. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
2. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

6. Contractor's Responsibilities

- A. *Contractor's Means and Methods.* Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, unless such means, methods, techniques, sequences (including constraints), or procedures are specified in the Contract Documents.
- B. *Supervision and Superintendence.* Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in strict

accordance with the Contract Documents. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without Notice to Owner except under extraordinary circumstances

- C. *Labor; Working Hours.* Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed on business days during regular working hours, as defined in the Supplementary Conditions. Contractor shall not perform Work on a Saturday, Sunday, or any holiday without Owner's prior written consent (which will not be unreasonably withheld) given after prior notice to Owner. Owner is under no obligation to approve Contractor's request to perform Work outside regular working hours. If the Contractor performs Work outside regular working hours, or on a Saturday, Sunday, or any holiday listed herein, Owner will deduct from the Contractor's payment application, or invoice the Contractor separately, the Owner's inspection time at the hourly rate specified in the Supplementary Conditions. For Work performed on a Saturday, Sunday, or any holiday listed herein, the minimum amount deducted from the Contractor's payment application will be the inspection labor charge for four hours.
- D. *Services, Materials, and Equipment*
1. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, Equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.
 2. All materials and Equipment incorporated into the Work shall be as specified or, if not specified, shall be of excellent quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner.
 3. No materials or supplies for the Work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sales or other agreement by which an interest is retained by the seller. The Contractor warrants that it has clear title to all materials, equipment, and supplies provided under the Contract.
- E. *Project Schedule.* Contractor shall prepare a bar-chart schedule showing how the Contractor intends to perform the Work within the Contract Time. The schedule shall include the critical path through the work.
- F. *"Or equal" Provision.* Whenever an item of material or Equipment, product, device, fixture, form, system, type of construction, standard, or other item (collectively known hereafter as "item") is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such item is intended to establish

the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item or no substitution is permitted, other items of other Suppliers may be submitted to Owner for review. The Owner, in its sole discretion, will determine whether such other products are equal to that specified.

G. Subcontractors and Suppliers

1. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.D, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.
2. Contractor shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor’s own acts and omissions. Nothing in the Contract Documents:
 - a. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 - b. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

H. *Permits.* Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work. Contractor shall pay all charges of utility owners for connections for providing permanent service to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

I. Laws and Regulations

1. Contractor shall give all Notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Contractor's compliance with any Laws or Regulations.
2. If Contractor performs any Work that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, fines, penalties, fees and charges of any regulatory or governmental body, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work. The Contractor shall not be responsible for ensuring that the Specifications and Drawings are in accordance with Laws and Regulations.
3. This Contract and all subcontracts are subject to the provisions of Articles 3 and 5, Title 40.1, Code of Virginia, relating to the labor unions and the "right to work." The Contractor and its Subcontractors, whether residents or non-residents of the Commonwealth, who perform any Work related to the Project shall comply with all said provisions.
4. *Employment of Aliens.* It shall be the responsibility of the Contractor to comply and to require compliance by others on the Project with all federal, state and local laws dealing with employment of aliens, including, but not limited to, the requirements and prohibitions provided in the Immigration and Nationality Act (INA) of 1952, as amended, and the Immigration Reform and Control Act (IRCA) of 1986, as amended, which control employment of unauthorized aliens.
5. *Employment Discrimination.* During the performance of this Contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the 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.
 - a. 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.
 - b. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this subparagraph.
6. *Drug-Free Workplace.* During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's 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 violations of 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 over \$10,000.00, so that the provisions will be binding upon each Subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of Work done in connection with the Contract awarded to the Contractor in accordance with Virginia Code Section 2.2-4312, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, possession, or use of any controlled substance or marijuana during the performance of the Contract. The Contractor shall also establish, maintain and enforce policies which prohibit the following acts by all Subcontractor and Supplier personnel at the Site: (1) the manufacture, distribution, dispensation, possession, or use of alcohol, marijuana or other drugs, except possession and medically prescribed use of prescription drugs; and (2) the impairment of judgment or physical abilities due to the use of alcohol, marijuana or other drugs, including impairment from prescription drugs.

7. *Virginia State Corporation Commission.* The Contractor shall maintain a valid certificate of authority or registration to transact business in Virginia with the Virginia State Corporation Commission as required by Section 13.1 of Title 50 of the Code of Virginia, during the term of the Contract or any Contract renewal. The Contractor shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the terms of the Contract.
8. *Labeling of Hazardous Substances.* If the items or products provided under this Contract are "hazardous substances" as defined by the *Code of Virginia* or Section 1261 of Title 15 of the United States Code, the Contractor shall ensure these "hazardous substances" are properly labeled as required by the aforementioned sections and that the Contractor does not violate any of the prohibitions of the *Code of Virginia* or Title 15 U.S.C., Section 1263.
- J. *Taxes.* Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work, which includes local business taxes. For questions regarding Loudoun County's local business tax, contact the Loudoun County Commissioner of the Revenue's office at 703-777-0260.
- K. *Limitations on Use of Site and Other Areas.* Contractor shall confine construction equipment, the storage of materials and Equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or

other materials or Equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work. Should any claim be made by any such owner or occupant arising from or related to the performance of the Work by Contractor or by anyone for whom the Contractor is responsible, Contractor shall promptly act to correct the claimed damages, or settle with such owner or occupant.

- L. *Removal of Debris:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations. Contractor shall clean the Site prior to completion of the Work.
- M. *Safety and Protection.* Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations, including, but not limited, to the Occupational Safety and Health Administration (OSHA) and the Virginia Occupational Safety and Health (VOSH) Compliance Program. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to all persons on the Site or who may be affected by the Work; and other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction. Contractor shall maintain all passageways, guard fences, guide rails, lights and facilities for protection required by public authority or local conditions.
- N. *General Warranty and Guarantee.* Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Owner;
 - 2. payment by Owner of any progress or final payment;
 - 3. use or occupancy of the Work or any part thereof by Owner;
 - 4. any review and approval of a Shop Drawing or Sample or the issuance of a Notice of acceptability by Owner or Engineer;
 - 5. any inspection, test, or approval by others; or
 - 6. any correction of defective Work by Owner.
- O. *Indemnification.* To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and

subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

- P. *Use of Loudoun Water Facilities Prohibited.* Contractor shall be responsible for providing rest room and other facilities for its employees, and shall be prohibited from using Loudoun Water facilities.
7. *Other Work at the Site.* If Owner contracts with others for the performance of other work on the Project at the Site, or an adjacent property, the Owner will be responsible for coordination of the various contractors. Contractor shall cooperate with Owner and Owner's requests relating to coordination.
8. *Owner's Responsibilities*
- A. *Inspections, Tests, and Approvals.* The Owner reserves the right to conduct inspections and testing of the Work, with its own forces or with that of a third-party, as the Owner deems is necessary to better ensure compliance with the Contract requirements and for approval of the Work. Such tests may include, but not be limited to, those outlined in the EDM.
- B. *Owner's Representatives.* The Owner will, with its own forces, administer the Contract. The Owner will appoint a Project Manager for administration of the Contract, and to receive and issue notices on behalf of Owner, issue and process change orders, review RFCs and provide responses, and review submittals for compliance with the Contract requirements.
- C. *Visits to Site.* Owner may make visits to the Site at intervals appropriate to the various stages of construction as Owner deems necessary in order to observe the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Owner will determine, in general, if the Work appears to be proceeding in accordance with the Contract Documents. Owner will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. *Electronic Communications.* The Owner will serve as the ProCore® administrator, will maintain the ProCore® license and software for use by all parties, and will provide training guidance to the Contractor regarding the use of ProCore®.

9. Engineer's Role during Construction
 - A. The Engineer's role during construction, if any, will be identified in the Supplementary Conditions.
10. Changes in the Work
 - A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions to the Work by a change order, which shall be priced pursuant to Article 11. Such change order shall include an adjustment to Contract Times if necessary for performance of additional Work.
 - B. If the Owner and Contractor are unable to agree on the change order price, the Owner may direct the work be performed on a time and material basis. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents, and submit its time and material costs pursuant to Article 11.
 - C. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, associated with a change order; or are unable to agree to the terms of a change order; or where the Contractor has expressed a reservation of rights beyond that included in the change order, the Owner may, in its sole discretion, modify unilaterally the Work, the change to Contract Price or Contract Times as it may deem appropriate through the issuance of a Unilateral Change Order (UCO).
11. Change Order Pricing Mechanisms
 - A. Negotiated pricing: Change to Contract Price that is negotiated and agreed-to between the parties. The Contractor agrees to itemize its proposed change order pricing into labor, materials and equipment provided, equipment used to perform the additional work, and 15% mark-up (total) for overhead and profit.
 - B. Time and Material: The actual cost to perform additional Work, which shall be substantiated by daily work tickets. The equipment rates shall be the rates provided on equipmentwatch.com. Idle time is not compensable. Project management time, office management time, and the time for corporate officers is not compensable.
 - C. Unit Price: The change to contract price based upon pre-established unit prices.
12. *Claims.* If the Contractor is of the opinion that it is due additional compensation above the Contract Price or additional Contract Time for work that is (i) outside the scope of Work, (ii) because of any action or inaction by the Owner or another utility, or (iii) the result of delays from weather or unforeseen conditions, Contractor shall document its position in a notice of claim to the Owner, which shall be submitted within three days of the event giving rise to the claim. The responsibility to substantiate a claim shall rest solely and exclusively with Contractor. Strict compliance with the provisions of this Article, including all notice and submittal requirements, shall be a condition precedent to the assertion of any claim, and any claim not presented as required by the provisions of this Article shall be barred. Compliance with such requirements, however, shall not create any presumption of the

validity of such claim. The Owner will issue its final decision in response to the Contractor's notice of claim within 14 days of receipt of the Contractor's notice of claim.

13. Tests and Inspections

A. *Tests by Contractor; Owner Access for Observing Tests and Conducting Inspections.* Certain tests and inspections, including but not limited to, pipe pressure tests, leakage tests, and vacuum tests will be performed by Contractor and witnessed by the Owner. Contractor shall provide safe access to the Work for the Owner for inspecting the Work and witnessing the testing, and shall coordinate and cooperate with the Owner, which includes providing at least three days written notice to the Owner.

B. *Third-party Testing.* Certain testing, most notably materials testing, will be performed by a third party, either under a direct contract with the Owner or under a subcontract with the Contractor. Contractor shall provide safe access for, and coordinate with, the third party testing agency, regardless of whether the third party testing agency is under contract with the Owner or Contractor.

14. *Correction Period.* The Contractor warrants its Work to be free of defects for one year following completion, and upon notice by the Owner during the correction period, the Contractor will repair or replace the defective (or non-functioning) Work within seven days of the Owner's notice. The correction period is also known as the warranty period.

15. Payments to Contractor and Completion

A. Contractor shall submit its payment application, on a form provided by Owner, within five days following the end of the month for Work performed during the month in which the Contractor is requesting payment. The Owner will review the payment application and either approve it for payment or reject it with reasons cited. The payment application shall (1) include backup invoices to substantiate the requested amount and (2) be based upon the Contractor's schedule of values or unit price schedule. After approval by the Owner, the Contractor will submit its payment application electronically to the Owner via email to financedept@loudounwater.org. The Owner will process the Contractor's payment application and transfer the payment to the Contractor electronically within 28 days of receipt of the Contractor's payment application. Prior to completion, the Owner will deduct 5% retainage from each payment application.

B. Following the Contractor's first payment application, Contractor shall include a partial release of liens and claims on a form provided by the Owner. The Contractor's final payment application shall include a final release of liens and claims on a form provided by the Owner.

C. *Right to Withhold Payment or Portion Thereof.* The Owner reserves the right to withhold progress payments or a portion thereof if:

1. the Work is not proceeding according to the requirements of the Contract Documents;

2. the project schedule, schedule of values, and schedule of submittals have not been accepted by Owner;
 3. the Contractor has not satisfied the conditions precedent to payment;
 4. claims have been made or threatened against Owner on account of Contractor's performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 5. there are other items entitling Owner to a set-off against the amount included in the payment application;
 6. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 7. Owner has determined, in Owner's sole discretion, that the remaining balance will not cover the cost to perform the remaining Work; or
 8. Contractor has failed to provide and maintain required bonds and insurance.
- D. *Payment of Subcontractors.* Contractor shall be liable for the entire amount owed to any Subcontractor with which it contracts. Contractor shall not be liable for amounts otherwise reducible due to the Subcontractor's noncompliance with the terms of their contract. However, in the event that the Contractor withholds all or a part of the amount promised to the Subcontractor under their contract, the Contractor shall notify the Subcontractor, in writing, of its intention to withhold all or a part of the Subcontractor's payment with the reason for nonpayment. Payment by the Owner shall not be a condition precedent to Contractor's payment to any Subcontractor of any tier, regardless of Contractor receiving payment for amounts owed to Contractor. Any provision in any of the Contract Documents contrary to this Paragraph 15.D shall be unenforceable.
1. After the Owner has paid the Contractor, the Contractor shall take one of the following actions within seven (7) days after receipt of payment:
 - a. Pay the Subcontractor or Supplier for the proportionate share of the total payment received from the Owner attributable to the Work performed by the Subcontractor or Supplier.
 - b. Notify the Owner and Subcontractor, in writing, that the Contractor will withhold all or a part of the Subcontractor's payment with the reason for nonpayment.
- E. *Subcontract Provisions.* Pursuant to the Code of Virginia, Section 2.2-4354, the Contractor shall include the following requirements in its subcontracts.
1. Contractor shall pay interest of 1 percent per month to Subcontractors on any amounts owed by Contractor that remain unpaid after seven (7) days following receipt by Contractor of payment from Owner, except for amounts which Owner has notified Contractor are being withheld.

2. Contractor shall include in each of its subcontracts a provision requiring each Subcontractor to include the payment and interest provisions in paragraphs C and D above in its subcontracts.
- F. *Contract Completion.* The completion requirements for the project are included on the Contractor's bid form. Certain contracts may include completion requirements, with liquidated damages associated with each. Retainage shall be released to the Contractor as part of the Contractor's final payment application.
- G. *Interest.* All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate of 0.01 percent per annum

16. Suspension of Work and Termination

- A. *Suspension of Work.* At any time, the Owner has the right to suspend performance of the Work, or a defined portion thereof, if the Owner determines, in the Owner's sole discretion, that it is in the Owner's best interests to do so. Such suspension shall be accomplished by notice to Contractor specifying the extent of suspension and the effective date. If determined necessary by Owner, the notice of suspension shall advise Contractor why the Work, or defined portion thereof, is being suspended. If the notice of suspension was issued because of circumstances beyond the Contractor's control, and through no act or fault of the Contractor, the term of the suspension shall be no more than 90 consecutive days unless agreed to by the Parties. Upon receipt of such Notice of suspension, the Contractor shall immediately, to the extent of the suspension:
 1. stop Work;
 2. place no further subcontracts or other orders for materials or services related to the suspended Work; and
 3. issue Notice of suspension of Work to all affected Subcontractors to the extent of such suspension.
- B. The Owner may, in its sole discretion, convert the suspension of the Work to a termination for convenience.

17. *Dispute Resolution.* Whenever the Contractor disagrees with the Owner's final decision on a claim under Article 12, Contractor's sole right of appeal shall be by filing, within six (6) months of date of the Owner's final decision, litigation in either the Circuit Court of Loudoun County, Virginia or the United States District Court for the Eastern District of Virginia, Alexandria Division. These two courts shall have exclusive and binding jurisdiction and venue over any and all claims arising under the Contract for which the Owner's final decision is appealed by the Contractor. The parties voluntarily waive any and all rights to trial by jury. The fact finder shall be the Court, sitting without a jury.

18. Miscellaneous

- A. *Owner an Agency of the Government.* Contractor acknowledges that Owner is an agency of the Government and as such its property is immune from mechanic's liens. The Contractor hereby waives any and all mechanic's lien rights it may

purport to have, and agrees that it shall neither file nor assert any such lien claim. The Contractor shall indemnify and hold Owner harmless in the event of the filing of a mechanic's lien by any third party related to the performance of the Work, including but not limited to all attorneys' fees and costs incurred by the Owner in the defense or removal of such lien.

B. *Fines and Penalties.* Contractor shall be solely liable for, and shall reimburse the Owner for, any and all fines which may be levied by any governmental authority against the Owner and/or the Contractor which are resulting from Contractor's operations. The Contractor consents to deduction of any fines and penalties, which are resulting from the Contractor's operations and levied against the Owner, from the Contractor's payment application.

C. *Controlling Law*

1. This Contract shall be governed by the laws of the Commonwealth of Virginia, including the Virginia Public Procurement Act (VPPA), Title 2.2, Chapter 43, Code of Virginia 1950 as amended.

2. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

D. *Time is of the Essence.* Contractor agrees that time is of the essence in the performance of its obligations under these Contract Documents.