Purchasing Order General Terms and Conditions - Instructions to Vendors

These Purchasing Order General Terms and Conditions, the “Purchase Order”, set forth the terms and conditions pursuant to which the Loudoun County Sanitation Authority, doing business as Loudoun Water, agrees to procure from the Contractor, and the Contractor agrees to furnish and provide, the goods and/or services described herein. LOUDOUN WATER and the Contractor hereby agree as follows:

1. Authorization to do Business in Virginia: Each contractor that is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership, or registered as a registered limited liability partnership hereby represents and warrants as follows: (a) it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, or as otherwise required by law; and (b) it shall not allow it to exist in a state, or to register in another state to serve as the basis of its existence in Virginia, or to use any material breach of the representations, warranties, agreements, and covenants of the Contractor contained in the Purchase Order; (2) any injuries to persons or property caused by any negligent or wrongful act or omission of the Contractor or its subcontractors, vendors, employees, or other authorized representatives; (3) any claims filed by the Contractor or adjudicated or otherwise determined in favor of LOUDOUN WATER; (4) any claims filed against LOUDOUN WATER by a subcontractor or employee of the Contractor; or (5) any claims or suits for infringement of United States or foreign patents, copyrights, trademarks, trade secrets, or other intellectual property rights or claims of unfair competition arising out of or resulting from LOUDOUN WATER’s purchase, use, and/or possession of any goods and/or services.

2. Goods and/or Services: The Contractor shall furnish, deliver, and/or perform such goods and/or services at the price and/or fees payable with respect to such goods and/or services. The price(s) and/or fees shall be fixed and/or otherwise agreed in writing by LOUDOUN WATER. LOUDOUN WATER shall not pay for any goods in excess of the purchase order. The Contractor shall not be entitled to any additional amounts at any additional cost to LOUDOUN WATER.

3. Exact Quantities: The Contractor shall provide the exact quantities specified therein. LOUDOUN WATER shall not pay for any items or materials not described within the Purchase Order. The Contractor shall be solely liable for damaged goods resulting from improper packing or marking.

4. Packing and Risk of Loss: The Contractor shall bear any risk of loss respect to or, and shall be solely responsible for, the goods until delivery at the facility or other location designated in writing by LOUDOUN WATER. An itemized packing list and identification of the items included shall be furnished to LOUDOUN WATER prior to any pick-up or delivery of the specification item(s). The Contractor shall supply all necessary packing supplies, at the Contractor's own risk and expense, and shall ensure all materials and goods will be delivered to the location described in the Purchase Order. The Contractor shall be solely liable for damaged goods resulting from improper packing or marking.

5. FOB Deliveries and Freight Claims: A. Unless otherwise specified in writing by LOUDOUN WATER, all prices are F.O.B. Destination (as designated in writing by LOUDOUN WATER), Freight Prepaid and Allowed. Shipment shall be by the most direct method; and where applicable, at the most economical cost to LOUDOUN WATER. LOUDOUN WATER shall not accept responsibility for the processing and/or filing of freight or other shipping claims, and shall not accept any charges relating thereto. Such goods shall be delivered F.O.B. Destination, freight prepaid, and allowed COD delivery, if specified.

B. Time is of the essence with respect to the delivery of all goods and the performance of all services procured pursuant to the Purchase Order. The Contractor shall prepare all documents required by law for the goods so delivered. LOUDOUN WATER will, at its sole option and discretion, return the additional quantities to the Contractor at the Contractor's risk and expense, or accept the additional quantities at any additional cost to LOUDOUN WATER.

6. Insurance: Unless otherwise specified in writing by LOUDOUN WATER, the Contractor shall maintain, for so long as this Purchase Order is in effect, the following types and amounts of insurance coverage: (a) to provide insurance coverage to any Purchaser during the performance of services performed regardless of location: Commercial General Liability insurance with a limit of liability that is not less than $1,000,000 combined single limit; and (b) with respect to any Purchase Order covering work or services performed on property owned or leased by LOUDOUN WATER, or on property otherwise operated by or on behalf of LOUDOUN WATER: (i) Workers’ Compensation insurance which satisfies applicable regulations; (ii) Employer’s Liability insurance with a limit of liability that is not less than $100,000 per employee, per bodily injury (or such greater amount as may be required by applicable statute); and (iii) Automobile Liability insurance with a limit of liability that is not less than $1,000,000 combined single limit. The Contractor hereby covenants and agrees as follows: (a) each such insurance policy shall be underwritten by an insurance company insuring a solvent insurance company that is acceptable to LOUDOUN WATER; (b) the Contractor shall supplement its insurance coverage with a policy that meets the requirements stated above, and (c) the Contractor shall promptly furnish LOUDOUN WATER's Procurement Manager with copies and/or certificates of insurance evidencing, by endorsement, the insurance coverage specified above, naming LOUDOUN WATER as additional insured on the General Liability and Auto Liability. Nothing contained herein shall be deemed to constitute a waiver of LOUDOUN WATER's sovereign immunity under law.

8. Invoices and Payment: A. To Contractor: (1) The Contractor shall submit a separate invoice for each separate delivery, invoice not more than once per month, in said shall be submitted to LOUDOUN WATER’s attn: Accounts Payable Office (mailto: accounts.payable@loudounwater.org).

B. Each invoice shall include the Purchase order number, the contractor’s federal employer identification number (or social security number, if the Contractor is an individual), a reasonably detailed description of the goods and/or services covered by the invoice, and the amount due. If shipping charges are included in an invoice, the original bill of lading shall accompany the invoice. The contractor must insure Manufacturer compliance with the requirements of the Purchase Order. Returns or adjustments to materials furnished under the Purchase Order Number, must be authorized in writing by LOUDOUN WATER before delivery. If the amount due under an invoice is not paid when due shall be deemed after approval of invoices, claims, or any other change, the resultant interest rate at a rate of 3% per month until paid in full.

C. The Contractor shall take one of the following actions within seven days after receipt of amounts paid to the Contractor by LOUDOUN WATER work performed by the subcontractor under the Purchase Order: (i) pay the subcontractor for the proportionate share of the total payment received from LOUDOUN WATER attributable to the work performed by the subcontractor under the Purchase Order; or (ii) notify LOUDOUN WATER and the subcontractor, in writing, of the Contractor’s intention to withhold all or a portion of the subcontractor’s payment with respect to the work performed by the subcontractor under the Purchase Order, except for amounts withheld as allowed in Section 7(b)(1).

D. Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of 3% per month. The Contractor shall include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

E. The Contractor shall pay all interest charges to a subcontractor pursuant to this Section 7(b) shall not be construed to be an obligation of LOUDOUN WATER. A contract modification shall not be made for the purpose of providing reimbursement for the interest cost. A cost reimbursement claim shall not include any amount for reimbursement for the interest.

9. General Warranty: The Contractor hereby represents and warrants to LOUDOUN WATER that any contractor’s goods and/or service supplied hereunder shall: (A) conform strictly to the requirements of the Purchase Order and to the specifications; (B) be made by LOUDOUN WATER’s approved vendor or furnished to LOUDOUN WATER by LOUDOUN WATER and by its successors, in which event said vendor’s and/or Contractor’s terms and conditions of sale, with respect to all such materials or services, shall be modified and/or supplemental except that said terms and conditions may conform or be different without the Contractor’s prior written approval; or (C) be furnished in a manner that will not infringe upon or constitute any threat to the copyright or rights of any person or entity.

10. Warranty of Non-Infringement: The Contractor hereby represents and warrants that LOUDOUN WATER’s purchase, possession, and/or intended use of the goods and services furnished under the Purchase Order will not infringe upon, or contribute to the infringement of, any United States or foreign patent, copyright, trademark, trade secret, or other intellectual property rights of any nature. If the use of any or all portion of such goods or services is enjoined, then the Contractor covenants and agrees that the Contractor shall, at its expense and subject to LOUDOUN WATER’s sole discretion, prepare the right to continue use by LOUDOUN WATER of such goods and services, modify such goods and/or services to render them non-infringing, replace such goods and/or services with non-infringing goods or services, or remove that portion of the goods and/or services and refund all amounts paid by LOUDOUN WATER therefor, plus all related transportation, installation and dismantling costs related to such goods and/or services. The Contractor shall defend LOUDOUN WATER against all claims and suits alleging infringement of any such patents.

11. Non-Conforming Goods and Services: If any goods or services furnished hereunder do not conform in all material respects to the representations and warranties set forth in the Purchase Order, then the Contractor shall promptly repair, replace, or re-perform all such goods and services upon written notice by LOUDOUN WATER which notice shall be given to the Contractor within twelve (12) months after the date of delivery, in the case of the non-conforming tender, and for the repair of or replacement of non-conforming services, at no additional cost to LOUDOUN WATER. At LOUDOUN WATER’s option, non-conforming goods may be repaired or replaced by the Contractor at LOUDOUN WATER’s facility or wherever otherwise located, or may be returned to the Contractor’s facility or to an authorized repair center, all at the Contractor’s expense. In the event of the Contractor’s failure to repair, replace, or re-perform any non-conforming goods or services or diligently initiate the correction, replacement, repair or replacement hereof within five (5) business days after the date of LOUDOUN WATER’s notice to the Contractor, LOUDOUN WATER may correct or replace the non-conforming goods or services, or pay for the reasonable cost of correction to the extent that such non-conforming goods or services are nonconforming or defective.

12. Indemnification: The Contractor hereby assumes all risks associated with furnishing the goods and materials specified herein and shall indemnify and hold harmless LOUDOUN WATER and LOUDOUN WATER’s members, officers, directors, consultants, and employees (collectively, the “LOUDOUN WATER Indemnitees”) from and against any and all claims, losses, liabilities, suits, judgments, and/or expenses (including reasonable attorneys’ fees and costs) (collectively, the “Losses”) arising out of in connection with any material breach of the representations, warranties, agreements and covenants of the Contractor contained in the Purchase Order; (2) any injuries to persons or property caused by any negligent or wrongful act or omission of the Contractor or its subcontractors, vendors, employees, or other authorized representatives; (3) any claims filed by the Contractor which are adjudicated or otherwise determined in favor of LOUDOUN WATER; (4) any claims filed against LOUDOUN WATER by a subcontractor or employee of the Contractor; or (5) any claims or suits for infringement of United States or foreign patents, copyrights, trademarks, trade secrets, or other intellectual property rights or claims of unfair competition arising out of or resulting from LOUDOUN WATER’s purchase, use, and/or possession of any goods and/or services.
services furnished under the Purse Order. The Contractor’s duties under this provision shall include the duty to obtain the approval of LOUDOUN WATER as to the legal counsel selected to defend LOUDOUN WATER and to confer with LOUDOUN WATER concerning the defense.

13. Default and Termination: Each of the following events shall constitute a default by the Contractor for purpose of the Purchase Order (each of which shall entitle LOUDOUN WATER to terminate in default in accordance with this Section): (a) any bankruptcy proceedings by or against the Contractor or the appointment of a trustee for the benefit of creditors; (b) a refusal or failure of the Contractor to deliver the goods, or to perform the services, in accordance with any of the agreed scheduled delivery dates; (c) if, based upon the current progress of the goods and services and information provided by the Contractor, the Contractor is projected to deliver any portion of the goods or perform services after the scheduled delivery date(s) for such goods or services, (d) assignment of the Purchase Order (or any portion thereof) for payment of any amount beyond the value of any conforming goods and services shipped or received and accepted by LOUDOUN WATER, less damages suffered by LOUDOUN WATER. In such case, the Contractor shall be liable to LOUDOUN WATER for any and all losses, costs and damages incurred by LOUDOUN WATER arising out of or resulting from such default, including and any and all liquidated damages which shall be based on the date(s) that a reasonable substitute supplier, exercising proper due diligence, achieved such respective scheduled deliveries. Upon request by LOUDOUN WATER, the Contractor will deliver or assign to LOUDOUN WATER any goods and services in progress at the time of termination.

14. Termination in Event of Default: At any time, LOUDOUN WATER may terminate any separate part of the Purchase Order by giving written notice of termination to the Contractor. On the date that notice of such termination is received by the Contractor, the Contractor shall: (a) discontinue all work relating to the goods and/or services so terminated except for work performed in compliance with the instructions set forth in the termination notice; and (b) refrain from placing any additional orders in connection with the terminated portion(s) of the Purchase Order. The Contractor shall not be entitled to any other payment from LOUDOUN WATER with respect to any terminated portion(s) of the Purchase Order including, but not limited to, any anticipated or future profits or damages in connection therewith.

15. Termination Due to Unavailability of Funds in Succeeding Fiscal Year: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the order shall be canceled and the Contractor shall be reimbursed for the reasonable value of any non-returning costs incurred but not amortized in the price of the supplies or services delivered under the order.

16. Waiver; Severability: Any waiver by LOUDOUN WATER of any breach by the Contractor of any term or condition of the Purchase Order shall not constitute a waiver of any subsequent breach of the same or any other term or condition hereof. The rights and remedies of LOUDOUN WATER set forth herein are not exclusive, but are in addition to all other rights and remedies of LOUDOUN WATER under applicable law. If any portion of the Purchase Order is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and the remainder of the Purchase Order shall remain in full force and effect.

17. Material Safety Data Sheets: By law, LOUDOUN WATER will not receive any materials, products, or chemicals which may be hazardous to an employee's health unless accompanied by a Material Safety Data Sheet (MSDS). This MSDS will be reviewed by the LOUDOUN WATER, and if approved, the materials, product or chemical can be used. If the MSDS is rejected, the Contractor must identify a substitute that will meet the LOUDOUN WATER's criteria for approval.


19. Reservation of Rights: Any action by LOUDOUN WATER to inspect or request of inspection or payment for the goods and/or services covered by the Purchase Order shall not prejudice LOUDOUN WATER's right to reject nonconforming or defective goods or services, or be construed to constitute acceptance by LOUDOUN WATER of the goods or services, or affect in any way the Contractor's obligations under the Purchase Order notwithstanding LOUDOUN WATER’s opportunity to inspect the goods or services hereto. LOUDOUN WATER’s knowledge of the nonconformity or defect, or nonconformance or defect of the goods or services shall not be sufficient to waive the right of LOUDOUN WATER to reject the goods or services so designated at the time of and/or within the reasonable period after delivery of the goods or services from LOUDOUN WATER from: (a) showing the true and correct classification, amount, quality, or character of the goods or goods and/or services delivered or performed hereunder, as the case may be, or that any determination, decision, acceptance, or payment is incorrect or was improperly made in any respect, or that the goods and/or services (or any part thereof) do not in fact conform to the requirements of the Purchase Order; and/or (b) demanding and recovering from the Contractor the payment made hereunder for said goods or services as damages as a reason of the Contractor's failure to comply with the requirements of the Purchase Order.

20. Governing Law; Venue: The Purchase Order shall be governed in all respects, whether as to validity, construction, capacity, performance or otherwise by the laws of the Commonwealth of VA, without reference to conflict of laws. Any action or proceeding arising out of or related to the Purchase Order shall be brought only in the courts of competent jurisdiction in the Commonwealth of VA, County of Loudoun. Contractor expressly consents to waiver of service of process in an action pending in the Loudoun County Circuit Court pursuant to Virginia Code Section 8.01-286.1.

21. Non-Discrimination:
A. LOUDOUN WATER does not discriminate against faith-based organizations.
B. During the performance of the Purchase Order, Contractor agrees as follows:
   (i) Contractor will not treat any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
   (ii) Contractor will not discriminate against any employee or applicant for employment because of route, race, color, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor.
   (iii) Notices, advertisements, and solicitations placed in accordance with federal laws, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of this Section 21(B).

22. Contractor obligations: Contractor will include the provisions of the bargaining Section 21(B)(i), (ii) and (iii) in every subcontract, sub-consulting agreement and Purchase Order over $10,000, in order that the provisions above will be binding upon each subcontractor, sub-consultant and vendor.

23. Notice of Required Disability Legislation Compliance: LOUDOUN WATER is required to comply with state and federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) for 1990 Title II and The Virginians with Disabilities Act of 1999. Specifically, LOUDOUN WATER, may not, through its Contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II of the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, II, and III of the Americans with Disabilities Act. The Virginia’s Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

24. Tax Exempt: LOUDOUN WATER is exempt from, and will not pay any, federal, state or local taxes which may be applicable to the transactions contemplated by these Purchase Order Documents, including without limitation any Federal Excise Tax, Transportation Tax or VA Sales and Use Tax. LOUDOUN WATER’s federal tax exempt identification number is: 54-0716770.

25. Drug-Free Workplace: During the performance of the Purchase Order, 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 that violation of this policy will result in disciplinary action for employees placed by or on behalf of Contractor that Contractor maintains a drug-free workplace; and (iii) include the provisions of the bargaining clauses in every subcontract or Purchase Order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor. For purposes hereof, a "drug-free workplace" shall mean the site for the performance of the contract contemplated by the Purchase Order. The Contractor acknowledges and agrees that: (a) alcoholic beverages, firearms and illegal drugs are prohibited in all LOUDOUN WATER properties; (b) Contractor's employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract contemplated by the Purchase Order.

26. No Employment of Unauthorized Aliens. The Contractor hereby covenants and agrees that it does not, and shall not during the performance of the Purchase Order knowingly employ an unauthorized alien (as such term is defined in the Immigration and Control Act of 1986). Contractor agrees to provide, at Contractor's expense, in accordance with Section 2.2-4363 (d) of the Code of Virginia, certificates of qualification or authorization from the Immigration and Naturalization Service which shall be presented at the time of such entry or employment for each employee of the Contractor who is an alien.

27. License: To the extent required by the Commonwealth of Virginia (see e.g. 54-1-1190 et seq. of the Code of Virginia), the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.

28. Business, Professional, and Occupational License Requirement: In order to obtain the approval of LOUDOUN WATER, the Contractor shall be duly licensed to perform the services contemplated by the Purchase Order.

29. Assignment, Substitutions or Modifications: The Contractor shall not assign or subcontract any right or obligation under the Purchase Order without the prior written authorization of LOUDOUN WATER. No assignment, substitution, modification, or deviation from the terms of the Purchase Order shall be made without prior written authorization from LOUDOUN WATER.

30. Relationship of the Parties: No Third Party Beneficiaries: The relationship of the Contractor and LOUDOUN WATER shall be that of an independent contractor and not that of an agent of LOUDOUN WATER. Neither the Contractor, nor any subcontractor, supplier, nor employee of the Contractor, shall be deemed to be an employee or agent of LOUDOUN WATER for any purpose whatsoever. No third party is entitled to rely upon any representation, warranties, and agreements of LOUDOUN WATER and the Contractor set forth herein. Neither LOUDOUN WATER nor the Contractor shall be liable to any third party because of any reliance on the representations, warranties and agreements of LOUDOUN WATER and the Contractor contained in the Purchase Order.

31. Performance under the Commonwealth of Virginia (see e.g. 54-1-1190 et seq. of the Code of Virginia), the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.