

**THE CONTRACT:** The documents ("Contract Documents") that form the contract (the "Contract") between the Clayton County Water Authority ("Buyer") and Seller are the Buyer's purchase order (the "PO") issued to Seller, all documents referenced in the PO (including without limitation drawings, specifications, instructions, quality assurance requirements and any other referenced documents), all drawings, specifications and other documents referenced in the Buyer's request for quotation issued to Seller for the Contract (unless and to the extent such documents are excluded from the Contract by express provisions in, and not by mere omission from, the PO), supplements to the PO issued to Seller by Buyer, these Terms and Conditions, and all documents referenced in any Contract Documents. What is required in any one Contract Document shall be deemed required by all Contract Documents and the Contract. Where there is any conflict or inconsistency between the provisions in one or more of the Contract Documents, the provision entitled ORDER OF PRECEDENCE shall be controlling, unless otherwise agreed in a writing signed by the representative (or his/her successor) of Buyer who signed the PO.

**ACCEPTANCE:** The acceptance by Seller of the terms of the Contract shall be deemed conclusively to have occurred upon Seller's acknowledgment of the PO, shipment of any goods, performance of any services, or commencement of any work on supplies or goods covered by the Contract. Any acceptance by Seller on purported terms and conditions ("purported terms") that differ in any way from the provisions of the Contract shall bind Seller to the terms and conditions of the Contract, and such purported terms shall not become part of, or in any way alter, amend or otherwise modify any of the provisions of, the Contract. Any shipment of goods, performance of services, or commencement of work on supplies by Seller shall be deemed to be only upon the terms and conditions contained in the Contract, except to the extent that Buyer may otherwise expressly consent to such altered terms in a writing signed by the representative (or his/her successor) of Buyer who signed the PO. Seller agrees that Buyer's acceptance or payment for any shipment of goods or similar act of Buyer shall not be claimed or construed to constitute such consent.

**DELIVERY:** (a) Delivery must be in strict compliance with the schedule contained in the Contract and shall be made by Seller at such times and places and of such items and quantities as may from time to time be specified by Buyer. If Seller fails to meet its scheduled delivery dates and Buyer elects to call for expedited shipments, Seller will pay the difference between the method of shipping specified and the actual expedited rate incurred. Seller shall be responsible for any additional charges resulting from deviation from Buyer's routing instructions. If Seller fails to make delivery promptly and regularly, as required under the Contract, Buyer may, in addition to other remedies available at law, terminate the Contract by giving written notice to Seller. Title and risk of loss shall remain with Seller until goods are delivered to the F.O.B. point specified in the Contract. Notwithstanding such delivery, Seller shall bear risk of loss or damage to goods purchased hereunder from the time that Buyer gives notice of rejection of goods pursuant to the inspection provisions of this Contract. If Seller encounters or anticipates difficulty in meeting the delivery schedule, Seller shall immediately notify Buyer in writing, giving pertinent details; provided, however, that such data shall be informational only in character and shall not be construed as a waiver by Buyer of any delivery schedule or date or of any rights or remedies of Buyer provided by law or the Contract. Parts fabricated in excess or in advance of Buyer's request are at Seller's risk. Buyer reserves the right, without loss of discount privileges, to pay invoices covering items shipped in advance of the schedule on the normal maturity after the date specified for delivery.

(b) Packaging and packing of items to be delivered by Seller under the Contract shall be shipped in a

manner to: ensure safe arrival at their destination, provide the lowest transportation cost, conform with the requirements of common carriers and, in any event, comply with Buyer's minimum specifications.

**INSPECTION:** Buyer shall have the right to inspect the goods and/or services supplied hereunder at any time during the manufacture or fabrication thereof at Seller's facilities or elsewhere. The items subject to such inspection may include, without limitation, raw materials, components, work in process, and completed products as well as drawings, specifications, and released data. Final inspection and acceptance shall be after delivery to the delivery point designated by Buyer. If any inspection or test is made by Buyer at Seller's facility or elsewhere, Seller shall provide reasonable facilities and assistance to the inspection personnel. Buyer may reject all goods supplied hereunder which are found to be defective. Goods so rejected may be returned to Seller at Seller's expense. No inspection, examination or test, regardless of extensiveness or type, and no approval given in connection with any such inspection, examination or test, whether under the Contract or another contract for the same or similar goods and/or services, shall relieve Seller, or be claimed by Seller to relieve it, of any obligation to comply fully with all requirements of the Contract, including the obligation to produce goods and/or services that conform to all requirements of the drawings, specifications and other Contract Documents. At Buyer's request, Seller shall repair or replace defective goods and/or services at Seller's expense. Failure to inspect goods and/or services, failure to discover defects in goods and/or services or payment for goods and/or services shall not constitute acceptance of such defective goods and/or services or limit any of Buyer's rights, including without limitation those under the warranty provisions of the Contract. In the event inspection reveals a defect or defects and schedule urgency requires that the defect or defects be corrected by Buyer to support production, all costs of such correction, including without limitation installation and removal, will be charged to Seller; such charges will also include time and material and appropriate indirect and overhead expenses. Seller shall maintain an inspection system acceptable to Buyer covering the goods and/or services furnished hereunder.

**OVERSHIPMENT:** Goods shall not be supplied in excess of quantities and shipping tolerances, if any, specified in the Contract. Seller shall be liable for handling charges and return shipment costs for any excess quantities, and unless Seller agrees to pay for such costs, the over shipped material will be retained by Buyer at no cost.

**PRICES:** Unless otherwise specified, prices are F.O.B. to the location designated by Buyer and shown on the face of the PO and are exclusive of state sales and use taxes. No charge will be allowed for packing, crating, drayage, or storage. Seller warrants that the prices charged for the goods and/or services are not higher than those charged to any other customer for goods and/or services of like grade and quality in similar or lesser quantities.

**PAYMENT:** Seller shall be paid upon submission of properly prepared invoices in accordance with Buyer's invoicing instructions for materials and supplies delivered to and accepted by Buyer. Any adjustments in Seller's invoice due to shortages, rejection or other failure to comply with the provisions of this Contract, or under any other order or contract between Buyer and Seller, may be made by Buyer before payment. Discount periods shall commence ten (10) days after the latest of scheduled delivery, actual delivery, or receipt of invoice. No charges will be honored unless specified on the face of the PO. Invoices must be accompanied by transportation receipt, if transportation is payable as a separate item.

**WARRANTY:** Seller warrants that goods ordered to specifications will conform thereto and to any drawings, samples, or other description furnished or adopted by Buyer, and will be fit and sufficient for the purpose intended; and that all goods are merchantable, of good material and workmanship, and free from all defects, including defects in design, materials and workmanship. Regarding any services provided under this Contract, Seller warrants: 1) that Seller is qualified to perform all services required of the Seller by this Contract; 2) that Seller possesses all licenses required of all public entities having jurisdiction over the Seller and the Buyer to perform such services; and 3) that Seller's workmanship will conform to all specifications and will perform as specified. Such warranties, together with Seller's other service warranties and guarantees, if any, shall survive inspection, test, acceptance of, and payment for the goods and/or services and shall run to Buyer, its successors, assigns, customers at any tier, and ultimate user and joint users. Notices of any defects or nonconformity shall be given by the Buyer to the Seller within fifteen (15) months after acceptance by ultimate user; provided however that in the event the goods are designed by Seller, notice must be given within three (3) years after acceptance by ultimate user. The rights and remedies of the Buyer concerning latent defects shall exist indefinitely, and shall not be affected in any way by any terms and conditions of this Contract, including this clause. Buyer may, at its option, and in addition to other remedies available at law, either (i) return defective or nonconforming goods for credit, (ii) require prompt correction or replacement of the defective or nonconforming goods and/or services, or (iii) have the defective items corrected or replaced at Seller's expense and deduct the cost thereof from any monies due Seller. The return to Seller of any defective or nonconforming goods and delivery to Buyer of any corrected or replaced goods and/or services shall be at Seller's expense. Goods and/or services required to be corrected or replaced shall be subject to the provision of this paragraph and the paragraph of this Contract Document entitled "inspection" in the same manner and to the same extent as goods and/or services originally delivered under this Contract. In addition to correcting or replacing any defective or nonconforming goods and/or services, Seller shall also reimburse Buyer for all costs and expenses incurred by Buyer in connection with inspection and discovery of the defects, identifying and correcting the cause of such defects and all other activities reasonably undertaken by Buyer to obtain conforming goods and/or services or attempting to obtain from the ultimate user a waiver to permit the defective goods and/or services to be used with all or part of the defective conditions.

**BUYER'S ASSISTANCE AND COOPERATION:** During Seller's performance of this Contract, Buyer may, at Buyer's option and without obligation, provide assistance to, or cooperate with, Seller in activities that facilitate the proper performance and completion of this Contract by Seller. Such assistance and cooperation may include without limitation: (i) providing engineering or other analysis or advice on correcting manufacturing deficiencies or other problems; (ii) acquiescing in a change of manufacturing facilities or location; (iii) refraining from strict enforcement of time schedule requirements under the Contract; (iv) permitting use of test materials or documentation not performed or produced under this Contract. Such assistance or cooperation by Buyer shall not be construed, and Seller agrees that it will not claim that any such assistance or cooperation operates, to relieve Seller from complete, proper and punctual performance of all of Seller's obligations under this Contract.

**COMPLIANCE WITH LAWS AND REGULATIONS:** Seller warrants that in the performance of this order Seller will comply with all applicable statutes, rules, regulations and orders of the United States, and of any State or political subdivision thereof, and agrees to indemnify Buyer

against any loss, cost, damage or liability, by reason of Seller's violation of this warranty.

**CHANGES:** Buyer may at any time, by a written notice, and without notice to sureties or assignees, make changes within the general scope of this Contract (each a "Change Order"). If any Change Order causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this Contract, whether changed or not changed by any such order, or affects any such order, or affects any other provisions of this Contract, an equitable adjustment shall be made in the price or delivery schedule, or both, and in such other provisions of this Contract as may be affected, and this Contract shall be modified in writing accordingly. Any claim by Seller for adjustment under this paragraph shall be asserted in writing within twenty (20) days from the date of receipt of the Change Order. Where the cost of property made obsolete or excess as a result of a Change Order is included in the equitable adjustment, Buyer shall have the right to prescribe the manner of disposition of such property. The amount of any price increase from a Change Order shall be based on the actual reasonable cost to perform the change. The amount of any price decrease from a Change Order shall be based on the reduction in the Seller's cost that reasonably should have occurred as a result of the Change Order. Seller shall maintain complete and accurate accounting records properly documenting the foregoing cost, and such records shall be produced for examination and copying by Buyer within ten (10) days of a request by Buyer. Failure to agree to any adjustment shall be a dispute within the meaning of the "Disputes" paragraph of this Contract Document. However, nothing in this paragraph shall excuse the Seller from proceeding with the Contract as changed. Any action taken by Seller which affects any provision of this Contract, including delivery and price, whether or not accomplished with the concurrence of Buyer's employees, shall not entitle Seller to an equitable adjustment in accordance with this paragraph, unless such action has been specifically directed by written notice issued by Buyer.

**STOP WORK ORDER:** Buyer may at any time, by written notice to Seller, require Seller to stop all or any part of the work called for by this Contract for a period of up to ninety (90) days after the notice is delivered to Seller ("Stop Work Order"). Upon receipt of the Stop Work Order, Seller shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Seller, or within any extension of that period to which the parties shall have agreed, Buyer shall either cancel the Stop Work Order, or terminate the work covered by this Contract as provided in the "Termination for Default" or the "Termination for Convenience" paragraphs of this Contract Document, whichever may be appropriate. Seller shall resume work upon cancellation or expiration of any Stop Work Order. An equitable adjustment shall be made in the delivery schedule or price hereunder, or both, and this Contract shall be modified in writing accordingly, if the Stop Work Order results in an increase in the time required for the performance of this order or in Seller's costs properly allocable thereto. The amount of any adjustment in the Contract price shall be determined as provided in the "Changes" paragraph of this Contract Document.

**TERMINATION FOR DEFAULT:**

(a) Buyer may, subject to the provisions of subparagraph (c) below, by written notice of default to Seller, terminate the whole or any part of this Contract under any of the following circumstances: (i) if Seller fails to make delivery of the goods and/or services or to perform this Contract within the time specified herein or any extension thereof; or (ii) if Seller fails to perform any of the other provisions of this Contract, or so fails to make progress as to endanger performance of this Contract

in accordance with its terms, and does not cure such failure within a period of ten (10) days (or longer period as may be authorized by Buyer in writing) after receipt of notice from Buyer specifying such failure.

(b) In the event Buyer terminates this Contract in whole or in part as provided in subparagraph (a) above, Buyer may procure, upon such terms and in such manner as Buyer may deem appropriate, supplies or services similar to those so terminated, and Seller shall be liable to Buyer for any excess costs for the same, including without limitation all costs and expenses of the type specified in the "WARRANTY" paragraph of this Contract Document; provided, that Seller shall continue the performance of this Contract to the extent not terminated hereunder.

(c) Except with respect to defaults of subcontractors, Seller shall not be liable for any excess costs if the failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of Seller. Such causes may include, but are not limited to, acts of God, or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of Seller.

If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both Seller and the subcontractor, and without the fault or negligence of either of them, Seller shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Seller to meet the required delivery schedule. The term(s) "subcontractor(s)" shall mean subcontractor(s) at any tier.

(d) If this Contract is terminated as provided in subparagraph (a) above, Buyer, in addition to any other rights provided in this Contract, may require Seller to transfer title and deliver to Buyer in the manner and to the extent directed by Buyer, (i) any completed goods, and (ii) such partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as Seller has specifically produced or specifically acquired for the performance of such part of this Contract as has been terminated; and Seller shall, upon direction of Buyer, protect and preserve property in the possession of Seller in which Buyer has an interest. Payment for completed goods and/or services delivered to and accepted by Buyer shall be at the Contract price. Payment for manufacturing materials delivered to and accepted by Buyer and for the protection and preservation of property shall be in an amount agreed upon by Buyer and Seller; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the paragraph of the terms and conditions of this purchase order entitled "Disputes." Buyer may withhold from amounts otherwise due Seller for such completed supplies or manufacturing materials such sum as Buyer determines to be necessary to protect Buyer or the Government against loss because of outstanding liens or claims of former lien holders or for damages otherwise caused by Seller's failure to perform its obligations under the Contract.

(e) If, after notice of termination of this Contract under the provisions of this paragraph, it is determined for any reason that Seller was not in default under the provisions above, or that the default was excusable under the provisions of this paragraph, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the "Termination for Convenience" paragraph of this Contract Document.

(f) The rights and remedies of Buyer provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**TERMINATION FOR CONVENIENCE:** Buyer may at any time by written notice terminate all

or any part of this Contract for Buyer's convenience. If this Contract is terminated, in whole or in part, for Buyer's convenience, Seller shall be paid an amount, to be mutually agreed upon, which shall be adequate to cover the actual reasonable cost paid by Seller for the actual labor and material reasonably used by Seller to perform the work under this Contract up to the effective date of termination, plus a reasonable profit thereon; provided that no amount shall be paid to Seller for (i) any anticipatory profits related to work under this Contract not yet performed, or (ii) costs incurred due to Seller's failure to terminate work as ordered on the effective date of termination. In no event shall the total amount paid under the provisions of this paragraph exceed the prices set forth in this Contract for the work terminated. If a Government contract number is cited on the face of the PO, a termination for Buyer's convenience shall be accomplished in accordance with the terms FAR 52.249, as in effect on the date of this Contract, which shall be controlling over any conflicting provisions hereof.

**INDEMNIFICATION:** If this Contract is issued under a Government prime contract or subcontract, Seller shall indemnify Buyer against and hold Buyer harmless from all claims, expenses, and losses, arising out of performance of this Contract by Seller: (i) when such claims, expenses, and losses result from the failure of Seller to furnish to Buyer, in accordance with the provisions of the relevant regulations, cost or pricing data, which is accurate, complete and current at the time of Seller's and Buyer's agreement to the negotiated price or at the time when Buyer requests a reaffirmation of the same, and (ii) when such claims, expenses and losses result from Seller's failure to comply with the rules and regulations in connection with covered contracts.

**DATA:** All drawings and specifications, furnished or paid for by Buyer shall be the property of Buyer, shall be subject to removal at any time without additional cost upon demand by Buyer, shall be used only in filling orders from Buyer, and shall be kept separate from other drawings and specifications, and identified as the property of Buyer. The information contained in reports, drawings, documents or other records which are furnished to Seller by Buyer relative to this Contract, to the extent that such information is not in the public domain, shall be deemed confidential and shall not be disclosed to others, except to subcontractors as necessary for completion of this Contract, in which event the subcontractor shall have the same obligation of nondisclosure. Upon completion, termination, or cancellation of this Contract, Seller shall return all drawings and specifications to Buyer, in the event Buyer requests return of any such items, within thirty (30) days after the effective date of completion, termination, or cancellation. Any such data of Buyer retained by Seller shall be deemed confidential and shall remain subject to the foregoing restrictions on use, reproduction and disclosure. Upon termination of this Contract, either for default or convenience, Buyer may, at Buyer's option, use, on a non-exclusive basis, all drawings, documents or other records related to this Contract, whether created by Buyer or Seller, without further compensation to Seller. Seller may not disclose the existence of this Contract or the items to be supplied hereunder without Buyer's written consent, except to subcontractors who shall have the same responsibility.

**WORK ON BUYER'S DESIGNATED PREMISES:** In the event that Seller, Seller's employees or agents or Seller's subcontractors enter Buyer's designated premises for any reason in connection with this Contract, Seller and such other parties shall observe all security requirements and all plant safety, plant protection, and traffic regulations. Seller shall defend, indemnify, and hold Buyer harmless from all claims, actions, demands, loss, and causes of action, arising from injury, including death, to any person, or damage to any property, when such injury or damage results in whole or in

part from the acts or omissions of Seller, Seller's employees or agents, save and except damage caused by the sole negligence of Buyer. Seller, and any subcontractor used by Seller in connection with this Contract, shall carry Workmen's Compensation and Employees' Liability Insurance to cover Seller's and subcontractor's legal liability on account of accidents to their employees. Seller and the subcontractor shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering accidents to their employees. Seller and the subcontractor shall carry adequate Comprehensive General Liability and adequate Comprehensive Automobile Liability Insurance covering legal liability of Seller and the subcontractor on account of accidents arising out of the operations of Seller or the subcontractor and resulting in bodily injury, including death, being sustained by any person or persons, or in any damage to property. At Buyer's request, Seller shall furnish to Buyer certificates from Seller's insurers showing such coverage in effect and agreeing to give Buyer ten (10) days' prior written notice of cancellation of the coverage.

**ASSIGNMENT AND SUBCONTRACTING:** Seller shall not assign this Contract or any portion of this Contract, nor shall Seller subcontract for completed or substantially completed goods or services purchased hereunder without the prior express written consent of Buyer. No assignment or subcontract by Seller, including any assignment or subcontract to which Buyer consents, shall in any way relieve Seller from complete and punctual performance of this Contract, including without limitation all of Seller's obligations under the warranty provisions of this Contract.

**INDEPENDENT CONTRACTOR:** Buyer and Seller agree that no provision of this Contract is intended to be, nor should they be construed in any way to create or establish any association, partnership, joint venture, or relationship of principal and agent or master and servant or employer and employee between the parties hereto or any affiliates, subcontractors, or subsidiaries thereof, or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.

**NOTICES:** All notices required or permitted to be given hereunder shall be deemed to be properly given if delivered in writing personally or sent by United States certified or registered mail addressed to Seller or Buyer, as the case may be, at the addresses set forth on the face of the PO, with postage thereon fully prepaid. The effective time of notice shall be at the time of mailing.

**INTERPRETATION:** Each party recognizes that this Contract is a legally binding contract and acknowledges that both parties have had the opportunity to consult with legal counsel of choice. In any construction of the terms of this Contract, the same shall not be construed against either party on the basis of that party being the drafter of such terms.

**COUNTERPARTS AND ELECTRONIC SIGNATURES:** This Contract may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same instrument. An executed signature page delivered via facsimile transmission or electronic signature shall be deemed as effective as an original executed signature page.

**CALCULATION OF TIME PERIOD:** Unless otherwise provided herein, whenever this Contract calls for or contemplates a period of time for the performance of any term, provision, or condition of this Contract, all of the days in such period of time shall be calculated consecutively without regard to whether any of the days falling in such period of time shall be a Saturday, Sunday, or other non-

business day; provided, however, if the last day of any period of time shall happen to fall on a Saturday or Sunday or legal holiday observed by the State of Georgia, the last day shall be extended to the next succeeding business day immediately thereafter occurring.

**WAIVER:** No waiver by Buyer of any breach of this Contract or the granting of an extension for performance hereunder shall be deemed to be a waiver of any other or subsequent breach. Seller agrees that it will not claim that Buyer has waived any of Seller's performance requirements under this Contract, and no such waiver shall be effective to relieve Seller from complete and punctual performance of such requirements, unless such waiver is expressly stated in writing and signed by Buyer's representative (or his/her successor) who signed the PO.

**DISPUTES:** Pending resolution of any dispute hereunder, Seller shall proceed diligently with the performance of work, including the delivery of goods and/or services in accordance with Buyer's direction.

**ORDER OF PRECEDENCE:** This Contract constitutes the entire, fully integrated agreement of the parties as to the subject matter hereof. In the event of any inconsistency among the foregoing, the inconsistency shall be resolved by giving precedence to the following documents in the following order: (i) the purchase order to which these terms and conditions are attached; (ii) these terms and conditions; (iii) the drawings; (iv) the specifications; and (v) the other documents incorporated by reference.

**APPLICABLE LAW:** The validity, performance and construction of this Contract shall be governed by and construed in accordance with the laws of the State of Georgia, excluding its choice of law rules. Jurisdiction and venue for any suit between the parties hereto arising out of or connected with this Contract, or the goods furnished hereunder shall lie only in Clayton County, Georgia.

**CONFIGURATION CONTROL:** Seller shall make no change in design, manufacturing, or assembly processes or source of supply, after approval of the first production test item or after acceptance of the first completed end item, without the written approval of the Buyer. Seller agrees that any approval by Buyer of the first production test item or any acceptance by Buyer of the first completed end item shall not in any way relieve Seller from performing all requirements of this Contract, including Seller's obligations under the provisions of the "WARRANTY" paragraph of this Contract Document.