

TOWN OF CULPEPER
STANDARD CONTRACT FOR GOODS, SERVICES, CONSTRUCTION AND INSURANCE

This Contract is entered into on and as of its Effective Date by and between the TOWN OF CULPEPER , a body politic and corporate of the Commonwealth of Virginia (hereinafter, “Town”), and _____ (hereinafter “Contractor”), for Goods, Services, Construction and/or Insurance identified herein, on the following terms and conditions:

SOLICITATION TITLE: _____

SOLICITATION NUMBER: _____

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I) FORMATION

A) Conditions Precedent to Formation:

Before any Contract between the Town and the Contractor is effective, the following conditions precedent must be satisfied. Satisfaction of these conditions is the responsibility of the Contractor. If, after performance under the Contract, the Town learns that a condition precedent was not met, the Town may, if permitted by law, ratify the Contract by affirmative recorded vote or may disclaim it, in its sole discretion.

- 1) Insurance: If the Solicitation requires certain insurance, the Contractor must provide proof of insurance in the amounts required by the Solicitation with an insurance company licensed to do business in the Commonwealth of Virginia.
- 2) Bonds: If the Solicitation requires payment or performance bonds, then bonds with surety satisfactory to the Town attorney shall be submitted to the Contract Administrator for approval.
- 3) Permits and licenses: If the procurement of the Goods, Services, Insurance or Construction that is the subject of this Contract requires possession of any licenses or receipt of any permits other than construction permits, then Contractor shall obtain those licenses and permits.
- 4) Payment of Debts: Contractor must pay all amounts shown as due to the Town on the Town's accounts, even if a dispute exists as to the debt's validity or enforceability.

B) Parties

- 1) The sole parties to this Contract are the Town of Culpeper and the Contractor.
- 2) Neither this Contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written permission of the Town in advance. No assignment without such permission will relieve the Contractor of any responsibility under this Contract.
- 3) There are no intended third party beneficiaries of this Contract, unless it is made available by rider for other governmental entities to use. Making the Contract available to them by rider is the sole extent of the intended third party benefit.
- 4) If this Contract is made available by rider for other governmental entities to use, any contracts formed between the Contractor and such other governmental entities shall be solely between those parties. The Town shall not be a party to any of these Contracts.
- 5) Contractor may not subcontract any of the work under this Contract without the prior, written approval of the Town, which will not be unreasonably withheld. The Contractor will, as soon as practicable after award of the Contract, give the Town a written list of each proposed subcontractor and the work to be done by that subcontractor. The Town shall, after reasonable investigation, promptly inform the Contractor if it objects to a particular subcontractor. If the Town objects, the Contractor will not use that subcontractor for any part of the work and will promptly submit in writing for the Town's approval the name of another subcontractor (or propose to use the Contractor's own forces) to perform those portions of the work. The Contractor will not change a subcontractor without giving the Town written notice of the proposed new Subcontractor and receiving the Town's approval after reasonable investigation. If the Town objects, the Contractor will either retain the existing subcontractor or propose a different subcontractor to the Town for approval. It is the Contractor's responsibility to obtain subcontractors whom the Town approves, and no delay due to the Town's objection to a subcontractor will authorize any change in the time required to perform the work.

C) Authority to Execute

By executing this Contract on behalf of Contractor, the Contractor's Representative warrants that he or she has full authority to do so.

D) Incorporation of Documents

The Contract consists of the following documents, which are hereby incorporated by reference and fully made a part of the Contract. This Contract and the incorporated

documents describe the subject of the Procurement, the particulars of its performance, the process and time for payment, and the rights and remedies of the parties (collectively, “the terms”). In case of any conflict between those documents’ terms, the documents shall be given precedence in the following order, from highest to lowest:

- 1) The Specifications of the Solicitation (if any) with matching identification number to this Contract,
- 2) This Contract,
- 3) The General Provisions of the Solicitation (if any) with matching identification number to this Contract,
- 4) The Bid Submission Form or Proposal of the Vendor with matching identification number to this Contract.

If there was no formal Solicitation, the specifications must be attached to this Contract for it to be valid.

E) Effective Date

The Effective Date of this Contract shall be the last to occur of (1) the date on which the Contractor’s Representative signs the Contract, (2) the date on which the Town Manager signs the Contract, and (3) the date that all conditions precedent to formation are satisfied.

II) PERFORMANCE

A) Notice to Proceed

After execution of the Contract and receipt of any documents required by the Contract Administrator before the Effective Date of this Contract, the Contract Administrator shall send the Contractor notice to proceed with the Contract as of a date convenient to the Town.

B) Contacts

In addition to the Contract Administrator and the Contractor’s Representative, the parties may designate additional contacts for exchange of information.

C) Acceptance of Work

Performance of the work and delivery of all Goods shall be conducted and completed in accordance with recognized and customarily accepted industry practices, and shall be considered complete when the services are approved as acceptable by the Contract Administrator. In the event of rejection of any deliverable, the Contractor shall be notified and shall have fourteen (14) calendar days from date of issuance of notification to correct the deficiencies and resubmit the deliverable.

D) Warranty

The Contractor warrants that all Services it performs and all Goods, Insurance, and Construction it delivers to the Town will be of good quality and meet the specifications of this Contract and of all literature supplied by the Contractor as part of the selection process which led to the award of this Contract. "Literature" as used in this provision means any and all brochures, fliers, catalogs, Proposals, web sites, email, or other information, in whatever written form, relating to the quality, utility, economic advantages, or composition of the Goods or Services. This warranty is in addition to and does not substitute for the Contractor's warranties of title, against infringement, of merchantability, and of fitness for particular purpose under Virginia Code §§ 8.2-312, 8.2-314, and 8.2-315, which the parties expressly agree apply to this Contract.

E) Invoices

- 1) Unless otherwise provided in the Solicitation, Vendor will submit all its invoices for payment in the fiscal year in which the Goods, Services, Insurance or Construction were provided or within thirty days thereafter. Late invoices are subject to rejection if no appropriated funds are available for their payment.
- 2) The invoice must be in the name of the Contractor unless an assignment has been received and approved by the Town.

F) Payment

- 1) In return for the goods, services, construction and/or insurance that are the subject of this Contract, and subject to paragraph III)D) of this Contract relating to "Non-appropriation of Funds," the Town shall compensate the Contractor within thirty (30) days after receipt of proper invoice for the amount of payment due or thirty (30) days after receipt of the goods or services, whichever is later.
- 2) With Construction contracts, the Town shall retain 5% of the amount earned for work done and materials delivered as retainage, to be paid in the final payment to the Contractor.

- 3) Within seven days after receipt of amounts paid to the Contractor by the Owner for satisfactorily completed performance, the prime contractor agrees to:
 - a) Pay the subcontractor for the proportionate share of the total payment received from the Owner attributable to the work performed by the subcontractor under that contract; or
 - b) Notify the Owner and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

If the Contractor after having received payment for the Owner fails to pay each subcontractor its proportionate share of the total payment, the Contractor shall be obligated to pay interest to each subcontractor on all amounts that remain unpaid after the seven days following receipt by the Contractor of payment from the Owner. Under no circumstances will the Town pay or reimburse this interest payment.

- 4) Unless otherwise provided under the terms of this Contract or by statute, interest shall accrue at a rate of one percent per month against the Contractor on any unpaid amounts owed to each subcontractor.
- 5) 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.
- 6) A Contractor that is an individual must provide his or her social security number and a Contractor that is any form of business entity must provide its federal employer identification number to the Contract Administrator before payment can be made.
- 7) The Town may offset any payment due to Contractor by any debt shown on the Town's accounts, even if a dispute exists as to the debt's validity or enforceability.

III) TERM AND TERMINATION

A) Base Term and Extensions

- 1) The base term for this Contract shall be for the period identified in the Solicitation or other specification.
- 2) This contract may be extended as provided in the Solicitation or by change order or amendment. If this is a fixed price contract, however, no extension may increase the price by more than twenty-five percent of the amount of the contract or \$50,000, whichever is greater, without a recorded affirmative vote of the Town Council. The Town may extend the term of this contract for services to allow completion of work undertaken but not completed under its original term.

B) Termination for Default

- 1) Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein.
- 2) Except in an emergency endangering life, safety, or the operation of the public, the party claiming default shall provide notice and an opportunity to cure the default to the other party before terminating the Contract for default.
 - a) Notice of Default shall be given at least ten business days before the date set for termination and shall set forth the grounds for claiming default of the other party and the steps demanded to cure the default.
 - b) If the party receiving the Notice of Default cures the default before the end of the cure period set out in the Notice, then the party sending the Notice of Default shall not terminate the Contract for default.
- 3) If the period for cure passes without curing of the default, then the party sending the Notice of Default may send a Notice of Termination for default to the defaulting party.
- 4) Default of one party shall not excuse the default of the other party. If both parties are in default, either or both may send a Notice of Default and, if warranted, a Notice of Termination.

C) Termination for Convenience

- 1) The Town may terminate this Contract or any work or delivery required hereunder from time-to-time either in whole or in part, whenever the Contract Administrator, with the concurrence of the Town Manager, determines that such termination in the best interest of the Town.
- 2) Termination may occur in whole or as to any discrete part of the Contract. A partial termination shall set forth the portions of the Contract which are terminated.
- 3) The effective date of the termination shall be three days after issuance of a Notice of Termination signed by the Contract Administrator and Town Manager and its mailing or delivery to the Contractor, or any later date specifically set forth in the Notice of Termination.

D) Termination for Non-Appropriation

- 1) If funds are not appropriated for purposes of this Contract for any succeeding fiscal year subsequent to the one in which this Contract is entered into, then the Town may terminate this Contract upon thirty (30) days written notice to the Contractor. The notice shall set forth the grounds for termination and its effective date.
- 2) If the Town terminates for non-appropriation, the Town shall be liable only for payments due through the effective date of termination.
- 3) Until the effective date of the termination, the Contractor shall continue to perform its duties under the Contract and is not excused from any portion of the Contract.

E) Claims Upon Termination

- 1) Upon receipt of a Notice of Termination, the Contractor shall:
 - a) Cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
 - b) Place no further orders with any subcontractors except as may be necessary to perform any portion of the Contract not subject to the Notice (in the case of partial termination);
 - c) Terminate all subcontractors except to the extent necessary to complete work which was not subject to the Notice (in the case of partial termination);
 - d) Settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Contract Administrator; and
 - e) Use its best efforts to mitigate any damages which may be sustained by the Contractor or any of its subcontractors as a consequence of termination under this clause.
- 2) After complying with the foregoing provisions, the Contractor shall submit a termination claim within thirty days unless an extension is granted by the Contract Administrator. This termination claim shall document all amounts due under this provision.
 - a) Upon receipt of the Contractor's termination claim, the Contract Administrator, with the approval of the Town Manager, shall pay from the Using Department's budget the reasonable costs of termination, including a reasonable amount for profit on services delivered or completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the goods or services not delivered, or those goods or services not provided. The calculation of the amount to be paid the Contractor shall be documented and made a part of the Contract file.

- b) If the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Contract Administrator shall pay the Contractor from the Using Department's budget the amounts determined as follows, without duplicating any amount which may have already been paid under the preceding paragraph of this clause:
- i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - Cost of the goods delivered or work performed; and
 - The cost of settling and paying any reasonable claims as provided above; and
 - A sum as profit on work performed determined by the Town Procurement Officer to be fair and reasonable.
 - ii) The total sum to be paid shall not exceed the Contract price, as reduced by the amount of payments otherwise made, and as further reduced by the Contract price of goods or services not terminated.
- c) If the Contractor is not satisfied with any payments which the Contract Administrator determines to be due under this provision, the Contractor may appeal any claim to the Town in accordance with paragraph V(C)1), Submission of Disputes.
- 3) The Contractor shall include similar provisions for termination in any subcontractors and shall require subcontractors to make reasonable efforts to mitigate damages if the Contract is terminated. Failure to include such provisions shall bar the Contractor from any recovery from the Town whatsoever for loss or damage sustained by a subcontractor as a consequence of termination.

IV) STATUTORY REQUIREMENTS

A) Employment Discrimination

In all contracts, regardless of contract amount, the Contractor will abide by the provisions of the Americans with Disabilities Act, and will require each sub-contractor to do so. If this Contract is for a consideration in excess of Ten Thousand Dollars (\$10,000.00), then during the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or 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 non-discrimination clause.

- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements, and solicitations placed in accordance with Federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this paragraph.
- 4) The Contractor will include the provisions of this Contract paragraph in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B) Ethics

The provisions contained in Chapter 43, Article 6, Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act, as set forth in the 1950 Code of Virginia, as amended, apply to this contract. The provisions of Article 6 of Chapter 43 supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interest Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

C) Drug-Free Workplace

During the performance of this contract the contractor agrees to:

- 1) Provide a drug-free workplace for the Contractor's employees.
- 2) 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.
- 3) State in all solicitations or advertisement for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace.
- 4) Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000.00, or so that the provisions will be binding upon each subcontractor or vendor.

D) Faith-Based Organizations

The Town of Culpeper in procuring goods and services, or in making disbursements pursuant to this section, shall not discriminate against a faith-based organization on the basis of the organization’s religious character or impose conditions that restrict the religious character of the faith-based organization, except funds provided for expenditure pursuant to contracts with public bodies shall not be spent on religious worship, instruction, or proselytizing, or impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursement.

E) Foreign And Domestic Businesses Authorized to Transact Business in the Commonwealth

- 1) A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.
- 2) A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this contract. The Town may void any contract with a business entity if the business entity fails to remain in compliance with this provision.

V) DISPUTES

A) Governing Law

This Contract is governed by the law of the Commonwealth of Virginia, including but not limited to the Virginia Public Procurement Act (VPPA), Sections 2.2-4300 et seq. of the Code of Virginia (1950), as amended. This Contract is also governed by the applicable Town Policies.

B) Hold Harmless

- 1) To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Town and its officers, agents, employees, community representatives, volunteers or others working on behalf of the Town from any and all claims, judgments, suits, losses, damages, payments, costs, fines and/or fees levied

against the Owner and expenses of every nature and description, including attorney's fees, arising out of, connected or associated with or resulting from the lack of performance or the negligent performance of work as described in this Contract, Contract Documents or any agreement that results from this Contract. Further, if the Contractor subcontracts for work, it will require in its subcontracts that each subcontractor indemnify, defend, and hold harmless the Town and its officers, agents, employees and community representatives, from any and all claims and losses accruing or resulting from the negligent performance of work as described in any agreement that results from this Contract.

- 2) To the fullest extent permitted by law, the Contractor shall also indemnify, defend, and hold harmless the Town and its officers, agents, employees, community representatives, volunteers or others working on behalf of the Town against all costs, including reasonable attorney's fees, arising from liens encumbering the Town's Property filed by subcontractors, sub-subcontractors, material suppliers, and all other persons and entities acting for and under the Contractor, and the Contractor shall immediately discharge or bond such liens off.
- 3) Virginia is a Dillon Rule state. Unless specifically permitted by statute, indemnification or any attempt to have the Town hold others harmless is invalid and unenforceable as an impermissible waiver of the Town's sovereign immunity which may create potential future debt in violation of Virginia Constitutional and statutory requirements. The Town cannot waive its sovereign immunity.

C) Conditions Precedent to Pursuit of Legal Remedies

Before the Contractor may exercise any legal remedy it may have in relation to rights arising out of this Contract, it must comply fully and strictly with each of the applicable conditions below. Failure to comply fully and strictly with an applicable condition precedent bars the Contractor from exercising any legal remedies it may otherwise have in relation to this Contract until it complies with the condition precedent or the Town knowingly and intentionally waives the condition precedent.

- 1) **Submission of Disputes:** A Contractor must submit any dispute arising out of this Contract to the Town for adjustment. In doing so, it shall provide all relevant evidence that bears on the Town's liability for the amount claimed or responsibility to grant any non-monetary relief requested.
- 2) Disputes by the Contractor with respect to this Contract shall be decided within fifteen (15) days from submission by the Town Manager's designee, who shall reduce his/her decision to writing, and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within five (5) days from the date of such decision the Contractor mails or otherwise furnishes the Town Manager a written appeal addressed to the Town Council. The Town Council shall consider the appeal and render its written decision within forty (40) days. The

decision of the Town Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or as not supported by any evidence. Pending a final determination of a properly appealed decision of the Town Manager's designee, the Contractor shall proceed diligently with the performance of the Contract in accordance with that decision.

D) Venue

Any action brought under this Contract must be brought in the state courts for the County of Culpeper and may not be removed to the Federal Court system.

E) Limitations on Actions

Any action brought under this Contract, except an action for breach of warranty, shall be brought within the shorter of the statutory limitations period and the period of three years from the date of final payment without any tolling of this statutory limitations period for any reason whatsoever.

F) Waiver of Jury Trial

In any action brought under this Contract, the parties expressly waive their right to trial by jury and agree to submit all questions of fact to the judge as trier of fact.

VI) MISCELLANEOUS

A) Definitions

Capitalized terms that are defined in the VPPA, Town Policy, or the Town's standard Solicitation for Goods, Services, Construction or Insurance have the same meanings in this Contract as are given in that law, policy, or Solicitation. Capitalized terms not defined in those sources but used in this Contract have the following meanings, unless the context clearly requires otherwise. Undefined terms have their common meanings appropriate to their context.

- 1) "Contract Administrator" means the person designated by the Town Manager to administer the Contract for the Town. The initial Contract Administrator is _____ but the Town Manager may designate a new Contract Administrator by notice to the Contractor.

- 2) "Contractor's Representative" means the person who is responsible for the performance obligation of the Contractor under this Contract. The initial Contractor's Representative is _____ but the Contractor may designate a new Contractor's Representative by notice to the Town.
- 3) "Drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.
- 4) "Notice of Default" means a notice sent to the other party's designee (Contract Administrator for the Town, Contractor's Representative for the Contractor) setting forth the facts showing that party to be in default under the Contract.
- 5) "Notice of Termination" means a notice sent to the other party's designee (Contract Administrator for the Town, Contractor's Representative for the Contractor) informing that party of the termination of the Contract as of a particular date.
- 6) "Town" means the Town of Culpeper, Virginia, the Town Manager, or the Manager's designee assigned responsibility for this Contract.
- 7) "Using Department" for purposes of this Contract shall mean _____.

B) Time of the Essence

Time shall be of the essence to this Contract, except where it is herein specifically provided to the contrary.

- 1) If the Contractor at any time finds that the schedule will not be met for any reason, the Contractor shall so notify the Town in writing.
- 2) Where Contractor is prevented from completing any part of the Work within the Contract Period due to abnormal weather conditions the Contract Period will be extended in an amount calculated as stated in Paragraph VI)B)5) below if a Claim is made therefor in writing and provided to the Town within the time frame and in the manner prescribed and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of the Contract Period under the Contract Documents.
- 3) Contractor acknowledges and agrees that adjustments in the Contract Period will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by Contractor; (ii) could not be limited or avoided by the Contractor's timely notice to the Town of the delay or reasonable likelihood that a delay will occur; and (iii) is of a duration not less than one day. Such an adjustment

of time shall be Contractor's sole and exclusive remedy for the delays described in this Section.

- 4) Actual adverse weather delay days must prevent work on critical activities outdoors for fifty percent (50%) or more of Contractor's scheduled workday in order to be counted. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. Where Contractor is prevented from completing any part of the Work within the Contract Period due to abnormal weather conditions, the Contract Period will be extended in an amount equal to the time lost due to such delay if a Claim is made therefore as provided herein. Abnormal weather conditions occur only if the total number of actual adverse weather days exceeds the standard for that month as shown in the following table:

Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov	Dec
7	7	8	7	8	7	8	8	6	6	6	6

- 5) Upon commencement of on-site activities and continuing throughout construction, Contractor shall record daily the occurrence of adverse weather and resultant impact to normally scheduled work and within 30 days of the last day of any month (hereinafter referred to as the "Reporting Month"), Contractor shall submit a written adverse weather report, including copies of Contractor's daily weather reports and applicable climatological data from the National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location, unless the Town allows, in writing, an additional period of time for the submission of said report. Notwithstanding any other provisions, failure to submit the required written report within the time specified above shall be deemed to be and shall constitute a waiver by Contractor of any and all claims for delay due to adverse weather conditions occurring during said Reporting Month.
- 6) The Town shall not be liable to Contractor for any claims, costs, losses, or 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) sustained by Contractor on or in connection with any other project or anticipated project.
- 7) Contractor shall not be entitled to an adjustment in Contract Price or Contract Period for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

C) Liquidated Damages

- 1) If Contractor fails to complete the work within the time specified in this Contract, or any extension, or defaults in any other obligation called for under this Contract, then Contractor shall, in place of actual damages, pay to the Town as fixed, agreed, and liquidated damages, and not as a penalty, for each calendar day of delay the sum of One Hundred and 00/100 Dollars (\$100.00).
- 2) Alternatively, if performance is so delayed, the Town may terminate this Contract in whole or in part under the Default clause in this Contract and in that event, the Contractor shall be liable for fixed, agreed and liquidated damages accruing until the time the Town may reasonably obtain performance of similar services. The liquidated damages shall be in addition to any increased costs occasioned the Town in completing the work.
- 3) The Contractor shall not be charged with liquidated damages when the delay in performance arises out of causes beyond the control and without the fault or negligence of the Contractor. Notwithstanding any other provisions of this Contract, it is mutually understood that any time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of this Contract. The change order granting the time extension may provide that the completion date will be extended only for those specific elements so delayed and that the remaining completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

D) Integration Clause; Modifications to the Contract

- 1) This Contract, including its incorporated documents, contains the whole agreement between the parties as to its subject, and no prior or contemporaneous communications, representations, or agreements, written or verbal, may alter, add to, or contradict any provision in it. There are no promises, terms, conditions, or obligations related to the subject of this Contract other than those contained herein.
- 2) All modifications and changes to the Contract shall be in writing and signed by the party to be charged, or its authorized representative.
- 3) The Contract Administrator, with the concurrence of the Town Manager, shall have the authority to order changes in this Contract, which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a "Change Order."
 - a) Such orders shall be limited to reasonable changes in the supplies, services to be performed or the time of performance; provided that the Contractor shall not be excused from performance under the changed Contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.

- b) Contractor need not perform any work described in any Change Order unless it has received a written certification from the Town that there are funds budgeted and appropriated sufficient to cover the cost of such changes.
- c) The Contractor shall make a demand for payment for completed changed work within 30 days of completion of Change Order, unless such time period is extended in writing, or unless the Contract Administrator requires submission of a cost proposal prior to the initiation of any changed work or services.
- d) No claim for changes made by Change Order shall be considered if made after final payment in accordance with the Contract.

E) Examination of Records

- 1) The Contractor agrees that the Town or any duly authorized representative of the Town may have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this Contract. This right shall expire on the third anniversary of the issuance of final payment under this Contract.
- 2) The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the Town or any duly authorized representative may have access to and the right to examine and copy any directly pertinent books, documents, papers, and records of such subcontractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public. This right expires on the third anniversary of the issuance of final payment to the subcontractor.

F) Assignment of Rights

- 1) Antitrust: By entering into a contract, the Contractor conveys, sells, assigns, and transfers to the Town all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Town under said contract.
- 2) Warranty: By entering into a Contract, the Contractor conveys, sells, assigns and transfers to the Town all warranties related to Goods provided to the Town under this Contract.

IN TESTIMONY WHEREOF, the Town of Culpeper has caused its name to be hereunto subscribed by Christopher D. Hively, Jr., its Town Manager, with its corporate seal hereunto duly affixed and attested by its Clerk, pursuant to authority heretofore duly granted by the Town of Culpeper; and

Contractor has caused its name to be hereunto subscribed by Contractor's Representative, and (if a Corporation) has caused its corporate seal to be duly affixed and attested by the person authorized to do so, signifying that it intends to be bound by this Contract.

[signature page follows]

THE TOWN OF CULPEPER

By:

Christopher D. Hively, Town Manager

ATTEST:

Clerk

Date

CONTRACTOR

Contractor's Representative

Print Name and Title

ATTEST:

Its:

Date