

AGREEMENT

This Agreement is by and between **Fauquier County Water and Sanitation Authority** (“Owner”) and **[CONTRACTOR]** (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

- Furnish and install groundwater well and treatment system components at two sites, each including a well pump, treatment building, and standby generator.
- Decommission existing groundwater well and treatment system components at one site.
- Furnish and install approximately 3,900 linear feet of 4-inch water main and 1,600 linear feet of 12-inch water main, including connections to existing water system.
- The associated electrical, controls, and instrumentation, as well as site work shall be provided.
- Other Work as shown on the Drawings and as specified including related site work.

ARTICLE 2—THE PROJECT

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

SALEM WELL EX3 AND EX4# WELLS

ARTICLE 3—NOT USED

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

A. All Contract Times for Milestones, if any, Substantial Completion, and Final Completion of the Work as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Completion*

A. The Contractor shall achieve Substantial Completion of the Work within 304 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions, and shall achieve Final Completion of the Work in accordance with Paragraph 15.07 of the General Conditions within 30 days after the Contractor has achieved Substantial Completion of the Work.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or other dispute resolution proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof,

Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$1000 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to finally complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$200 for each day that expires after the time specified in Paragraph 4.02 above for Final Completion of the Work until the Work is finally complete. In lieu of paying Owner liquidated damages, the Contractor agrees to the deduction of the liquidated damages from the amount otherwise due to Contractor through Contractor's payment application.

- B. The parties agree that the per diem measures of liquidated damages set forth herein are reasonable measures of the damages Owner is likely to suffer in case of delay, and Contractor agrees that it will not challenge the per diem amounts or liquidated damages assessed pursuant to this Paragraph 4.03. Contractor hereby waives any defense as to the validity of any liquidated damages stated herein on the grounds that such liquidated damages are void as penalties not reasonably related to actual damages. The parties further agree that the liquidated damages set forth in this Paragraph 4.03 shall be Owner's sole remedy for delay as a result of Contractor's failure to achieve Substantial Completion or Final Completion within the times required by the Contract. Whether or not liquidated damages are assessed for late Substantial Completion will have no bearing on the assessment of liquidated damages for late Final Completion, and vice versa, and liquidated damages shall accrue separately for late Substantial Completion and late Final Completion. In the event more than one ground for assessment of liquidated damages as provided by the Contractor Documents exists concurrently, such grounds shall be deemed independent and all applicable liquidated damages shall be deducted cumulatively.
- C. The liquidated damages amount will be calculated using the version of the Progress Schedule in effect at the time the liquidated damages are assessed. If the Contractor is subsequently granted adjustment(s) to Contract Time which results in the return of some, or all, of the liquidated damages assessed by Owner, the Owner will owe only the liquidated damages amount to the Contractor resulting from the adjustment(s) to Contract Time, and will not owe any interest for late payment.

ARTICLE 5—CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.01.A:

- A. For all Work, at the price stated in the Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment in accordance with the General Conditions and as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case

of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Final Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 15.02 of the General Conditions.
 - a. 95 percent of Work completed (with the balance being retainage); and
 - b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. If applicable for the Project and chosen for use by Contractor, the retainage will be held and administered pursuant to the Escrow Agreement.

6.03 *Final Payment*

- A. Upon Final Completion and acceptance of the Work in accordance with Paragraph 15.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Paragraph 15.07.

ARTICLE 7—INTEREST

- 7.01 All moneys not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate of 0.01 percent per annum.

ARTICLE 8—CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph 4.06 of the Supplementary Conditions as containing reliable “technical data.”
 - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor’s safety precautions and programs.
 - F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data

are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9—CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement.
 - 2. Performance bond.
 - 3. Payment bond.
 - 4. Other bonds.
 - 5. General Conditions.
 - 6. Supplementary Conditions.
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. Drawings consisting of:
 - 21 sheets with each sheet bearing the following general title: SALEM WELLS EX3
 - 19 sheets with each sheet bearing the following general title: SALEM WELLS EX4
 - 9. Addenda (numbers **X** to **X**, inclusive).
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
 - 11. The following which may be delivered or issued on or after the Effective Date of the Agreement:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Amendments to the Agreement.
- B. The documents listed in Paragraph 9.01.A are not attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.

- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10—MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

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

10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 1. “corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 *Language*

- A. The language in all parts of the Contract shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that the Contract has been carefully reviewed over a period of time, that each party has been given opportunity to review the Contract with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract, the Contract shall not be interpreted or construed against the party preparing them.

* * * * *

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on the date on which it is signed on behalf of the Owner (which is the Effective Date of the Agreement).

Owner:

Contractor:

Signature

Signature

By: Benjamin R. Shoemaker
Printed Name

By: _____
Printed Name

Title: Executive Director

Title: _____

Date: _____

Date: _____

* See note below

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving Notices:

Address for giving Notices:

7172 Kennedy Road

Warrenton, VA 20187

Virginia Contractor's

License No.: _____

Agent for service of process:

* If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.