

Coweta County Water & Sewerage Authority

Meeting Agenda

Wednesday, March 30, 2022

Board Room

Meeting Time: 9:00 A.M.

Approx

Time

Agenda Item

Presenter

9:00 a.m. Call to order

Vice Chairman Bartlett

Approval of minutes from the March 2, 2022 meeting

Business

Approval of Intergovernmental Agreement with
Fayette County for Water Supply

Jay Boren

Approval of Increase to Activation, Meter Connection,
Sewer Connection and Irrigation Meter Fees

Jay Boren

Approval of Letter of Recommendation for BT Brown
Contract Award- Carter & Sloope, Inc.

Jay Boren

Update on Operations

Rick Jones

Update on Customer Care/Information Technology

Alan Sibley

Update on Human Resources

Mandy Sledd

Monthly Report

Roger Dawson

Agenda Additions:

Executive Session

Litigation / Real Estate/ Personnel

Adjournment

Next Board Meeting Wednesday, April 27, 2022 at 9:00AM

STATE OF GEORGIA

COUNTY OF COWETA

**INTERGOVERNMENTAL AGREEMENT BETWEEN
COWETA COUNTY WATER & SEWERAGE AUTHORITY AND
FAYETTE COUNTY, GEORGIA FOR WATER SUPPLY**

THIS AGREEMENT entered into the ____ day of _____, 2022, by and between COWETA COUNTY WATER & SEWERAGE AUTHORITY, a body politic of the State of Georgia (hereinafter, the “Authority”) and FAYETTE COUNTY, GEORGIA, a political subdivision of the State of Georgia, acting by and through its Board of Commissioners (hereinafter, the “County”), collectively referred to as “Parties.”

RECITALS

WHEREAS, the Authority owns and operates the Coweta County Water System which serves as the potable water system for residents and businesses in Coweta County, Georgia (hereinafter, the “Coweta Water System”); and

WHEREAS, the County owns and operates the Fayette County Water System which serves as the potable water system for residents and businesses in Fayette County, Georgia (hereinafter, the “Fayette Water System”); and

WHEREAS, the Authority and the County desire to enter into a water supply agreement in furtherance of their operations to provide potable water to the residents and businesses within their respective jurisdictions.

NOW, THEREFORE, in consideration of the mutual covenants and benefits flowing between the Parties as set forth more fully below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE 1.

LEGAL AUTHORITY

The County and the Authority are authorized to enter into an intergovernmental agreement in accordance with the authority granted by Article IX, Section III, Paragraph I of the 1983 Constitution of the State of Georgia. Each of the Parties herein covenants that it has the requisite legal authority to provide the services, perform the functions, and otherwise do all things necessary, convenient, and expedient to carry out the obligations and responsibilities herein set forth, either expressly or by implication.

ARTICLE 2.

OBLIGATIONS OF THE COUNTY

2.1 Line Extension. The County shall provide the line extension and all associated infrastructure to extend the Fayette Water System to the Coweta County/Fayette County, Georgia line located on Highway 54 at Line Creek. The County shall provide any infrastructure needed to supply water to, and to receive water from, the Authority. The County shall maintain the line extension and all associated infrastructure located in Fayette County. The County shall contribute one-half (50/50) of the actual cost towards the boring under Line Creek at Highway 54 (hereinafter, the “Connection Area”), but in no event shall the County’s contribution exceed \$425,000.

2.2 Cost. Should the County request water from the Authority, the County shall pay the Authority’s wholesale rate or \$2.67 per one thousand (1,000) gallons, whichever is less, to the Authority for any water received by the County and shall be billed on a monthly basis.

2.3 Access. The County shall provide the Authority with twenty-four hour, seven days a week water supply at an average annual volume of 1.0 MGD to the Connection Area for water

supply. However, the Authority shall not draw a volume of water from the County in excess of 2.0 MGD in any twenty-four hour period.

ARTICLE 3.

OBLIGATIONS OF THE AUTHORITY

3.1 Line Extension. The Authority shall provide the line extension and any associated infrastructure to extend the Coweta Water System to the Coweta County/Fayette County Georgia line located on Highway 54 at Line Creek. The Authority shall provide any infrastructure needed to receive water from, and supply water to, the County. The Authority shall maintain the line extension and all associated infrastructure located in Coweta County. The Authority shall provide for the boring under Line Creek at Highway 54, which is separate from the line extension referenced in Section 2.1 above. The Authority shall pay all costs for the boring under Line Creek and understands that the County will contribute one-half of the amount of those costs. However, the Authority understands that the County's contribution is capped at \$425,000.

3.2 Cost. The Authority shall pay the wholesale rate of \$2.67 per 1,000 gallons of water to the County for any water received from the Fayette Water System and shall be billed on a monthly basis.

3.3 Access. The Authority shall provide the County with water up to an average annual volume of 1.0 MGD, if requested by the County. The Authority shall agree to take an average annual water volume of 1.0 MGD (365 million gallons annually). However, the Authority shall not draw a volume of water from the County in excess of 1.5 MGD in any twenty-four hour period. The Authority may submit a written request for an additional average annual volume of 0.5 MGD at any time during the Initial Term or any Renewal Term, as those terms are defined herein. It will

be up to the County to determine whether or not any volume of water above the 1.0 MGD is available for the Authority to purchase.

ARTICLE 4.

TERMINATION

This Agreement shall terminate unless either Party provides written notice during the Initial Term or any Renewal Term, as the case may be, as those terms are defined herein, at least ninety (90) days prior to the end of the Initial Term, or the Renewal Term, of this Agreement.

ARTICLE 5.

TERM

The term of this Agreement shall be five (5) years (the “Initial Term”). This Agreement may be renewed for an additional term of one (1) year (a “Renewal Term”). A Renewal Term is not automatic. Should either Party provide written request for a Renewal Term, such written request must be received by the other Party at least ninety (90) days prior to the end of the Initial Term, or any Renewal Term, as the case may be. The other Party may agree to the Renewal Term by providing written confirmation of agreement within ten (10) days of receiving the written request. Any subsequent Renewal Term, if any, may be renewed under the same terms and conditions as the original Renewal Term. The total duration for the Initial Term and subsequent consecutive Renewal Terms shall not exceed fifty (50) years.

ARTICLE 6.

RATE

The rate that the County shall charge for the water supply shall be billed monthly at \$2.67 per one thousand (1,000) gallons. The rate that the Authority shall charge for the water supply

shall be billed monthly at \$2.67 per one thousand (1,000) gallons, or the Authority's wholesale rate, whichever is less.

ARTICLE 7.

MISCELLANEOUS

7.1 **Emergency.** If either Party is confronted by an emergency event or stoppage over which they have no control, it is understood and agreed that this Agreement does not obligate either Party to guarantee continuity of water service, or the delivery of any specific quantity of water.

7.2 **Damage.** Neither Party will be liable for any failure, interruption or shortage of water, or any loss or damage resulting therefrom.

7.3 **Water Restriction.** If either Party, in its discretion, institutes water restrictions, the receiving Party must also institute the same or more severe restrictions for water conservation to the same degree as the most restrictive provider's restrictions to the initiating water restriction entity.

7.4 **Indemnity.** To the extent provided by law, the Authority and the County shall each indemnify, defend and hold the other harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "Losses") arising from the indemnifying Party's breach of any term or condition of this Agreement or from the negligence or misconduct of the indemnifying Party or its agents, employees or contractors. The duties described in this Paragraph shall apply as of the effective date of this Agreement and survive the termination of this Agreement.

7.5 **Severability.** If any provision of this Agreement is invalid or unenforceable with

respect to any Party, then the remainder of this Agreement, or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall remain valid and enforceable to the fullest extent permitted by law; if fulfillment of any provision of this Agreement, or performance of any transaction related hereto, at the time such fulfillment or performance shall be due, shall involve transcending the limit of validity prescribed by law, then the obligation to be fulfilled or performed shall be reduced to the limit of such validity.

7.6 Binding Effect. This Agreement shall be binding on and inure to the benefit of the respective party's successors and permitted assignees.

7.7 Governing Law. This Agreement shall be construed by the laws of the State of Georgia. The Authority and the County consent to the venue and jurisdiction of the Superior Court of Coweta County, Georgia.

7.8 Captions and Recitals. The captions and recitals of this Agreement are to be construed as part of this Agreement.

7.9 No Waiver. No provision of this Agreement shall be deemed to have been waived by either Party unless the waiver is in writing and signed by the Party against whom enforcement is attempted, nor shall a waiver by a Party of any right hereunder at any given time be deemed a waiver thereof for any other time.

7.10 Notice. Any notice required to be given in this Agreement will be made to the address of other parties set forth below:

County:

County Administrator
Fayette County, Georgia

140 Stonewall Avenue West, Suite 100
Fayetteville, Georgia 30214

Authority:

CEO
Coweta County Water & Sewerage Authority
545 Corinth Road
Newnan, Georgia 30263

IN WITNESS WHEREOF, the County and Authority have executed this Agreement as of the date first above written.

COWETA COUNTY WATER & SEWERAGE
AUTHORITY
by:

Chairman

BOARD OF COMMISSIONERS OF
FAYETTE COUNTY, GEORGIA
by:

LEE HEARN, Chairman

ATTEST:

ATTEST:

Tameca P. Smith, County Clerk

[SEAL]

[SEAL]

COWETA COUNTY WATER & SEWERAGE AUTHORITY
545 Corinth Rd, Newnan, GA 30263

PROPOSED CHANGES

Effective with Bill Date March 8, 2022 and After

Effective upon transition to New Payment Model – Estimated April 2022

FEES

AMOUNT OF FEE

Daily Operation Fees

Activation Fee / Transfer Fee / Administration Fee	\$75.00
BT Brown Rental Fee / Half Day	\$25.00
BT Brown Rental Fee / Whole Day	\$50.00
BT Brown Deposit (refundable)	\$150.00
Continuation of Service Fee	\$50.00
Cut On / Off Irrigation Meter	\$50.00
Fishing Permit (Jan – June)	\$40.00
Fishing Permit (July – Dec)	\$25.00
Late Charge Fee	10% of outstanding balance
Returned Check Fee	\$30.00
Recheck Meter Reading or for Leak	\$25.00
Same Day Service after 2:00 PM	\$25.00
Service Fee	\$25.00
Relocation of Meter (short distances see construction)	\$1,000.00
Tampering Fee – Residential	\$100.00 to \$300.00
Tampering Fee – Commercial / Builder	\$300.00 to \$1,000.00

Meter Connection Fees

Residential-Church ¾"	\$1,400.00
Residential-Church 1"	\$1,650.00
Residential-Irrigation ¾"	\$550.00 or \$1,400.00
Residential-Irrigation 1"	\$800.00 or \$1,650.00
Commercial-Industrial ¾"	\$2,100.00
Commercial-Industrial 1"	\$2,600.00
Commercial-Industrial 2"	\$7,550.00
Commercial-Industrial 3"-8"	Cost (variable)
Commercial-Industrial Irrigation ¾" (Including HOA Entrances)	\$2,100.00
Commercial-Industrial Irrigation 1"	\$2,600.00
Commercial-Industrial Irrigation 2"	\$7,550.00
Sewer Connection Fee 1.5"-8"	Cost (variable)
Fire Line Connection Fee: Com/Ind/Office & Multi Family	Cost (variable)
Bulk Water Permits	\$10/1,000 Gallons

Residential Water Rates

Base Charge	\$16.00
0 – 4,000 Gallons	\$5.70 / 1,000
4,001 – 10,000 Gallons	\$8.00 / 1,000
10,001 – 20,000 Gallons	\$9.30 / 1,000
20,001+ Gallons	\$11.30 / 1,000

Commercial/Industrial Water Rates

Base Charge	\$26.00
0 – 4,000 Gallons	\$6.60 / 1,000
4,001 – 10,000 Gallons	\$8.70 / 1,000
10,001 – 20,000 Gallons	\$10.00 / 1,000
20,001+ Gallons	\$11.30 / 1,000

*** Water and Sewer Rates may be adjusted semi-annually, at the discretion of management, based on the increase in the Consumer Price Index (CPI) as defined in CCW&SA policies

Residential Sewer Rates

Base Charge	\$16.00
0 – 4,000 Gallons	\$6.00 / 1,000
4,001 – 10,000 Gallons	\$7.80 / 1,000
10,001 – 20,000 Gallons	\$9.00 / 1,000
20,001+ Gallons	\$10.20 / 1,000

Commercial/Industrial Sewer Rates

Base Charge	\$16.00
0 – 4,000 Gallons	\$6.00 / 1,000
4,001 – 10,000 Gallons	\$7.80 / 1,000
10,001 – 20,000 Gallons	\$9.00 / 1,000
20,001+ Gallons	\$10.20 / 1,000

Church/School Rates

Base Charge	\$16.00
Per Gallon Charge	\$5.75 / 1,000
Minimum Meter Reading Fee	\$16.00 - \$5.75 / 1,000

Sewer Connection Fees

Commercial/Industrial/Schools/Churches	\$1,350.00
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Billing and Payment Fees

Paper Statement Fee	\$2.50
Electronic Statement Delivery	No Charge

Debit/Credit Card Convenience Fee

Debit/Credit Card Convenience Fee	2.5%
One Time eCheck Fee	\$1.50
Recurring Monthly eCheck Fee	\$1.25
Cash/Check/Bank Draft	No Charge

Development	Sewer Capacity	Sewer Connection	Water Connection	Re-Use Connection	Irrigation Meter	Grand Total**
Blalock Lakes (Decentralized)*	\$5,700.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$9,000.00
East Newnan (Cotton Mills)	\$3,950.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$7,250.00
Poplar Preserve	\$3,600.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$6,900.00
Res. Arnco/Sargent/East Newnan	\$3,600.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$6,900.00
Res. White Oak/Shenandoah/Wentworth Sub	\$3,600.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$6,900.00
RRCC Zoning	\$3,200.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$6,500.00
The Cottages at Lake Redwine	\$3,600.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$6,900.00
The Gardens at Arbor Springs	\$5,440.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$8,740.00
The Georgian at White Oak	\$3,600.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$6,900.00
Twelve Parks	\$4,950.00	\$1,350.00	\$1,400.00	\$0.00	\$550.00	\$8,250.00

*Blalock Lakes (Decentralized) – Possible additional charge: \$3.50/foot for labor and materials to run line from tank to house if line over 100 feet in length. Finance department will send separate invoice for this charge.

**Rates subject to change and represent 3/4" meters.

*** Water and Sewer Rates may be adjusted semi-annually, at the discretion of management, based on the increase in the Consumer Price Index (CPI) as defined in CCW&SA policies



March 21, 2022

Mr. James Stephens
Coweta County Water & Sewerage Authority
610 Lamar Smith Drive
Newnan, GA 30263

RE: Coweta County W&SA
B.T. Brown Water Plant Improvements
Letter of Recommendation for Contract Award
C&S Project No.: C8400.002
GEFA Project No.: DW-2016-012

Dear Mr. Stephens:

Bids were received and opened for the referenced project on March 8, 2022 at 2:00 PM through the QuestCDN online bidding website. We have checked and tabulated the bids as follows:

<u>Contractor</u>	<u>Total Base Bid</u>	<u>% Over Low Bid</u>
1. P. F. Moon & Company, Inc.	\$3,440,000.00	--
2. Lakeshore Engineering, LLC	\$3,749,314.50	9.0%
3. IHC Construction Companies, LLC	\$3,998,364.50	16.2%

As defined in the Instructions to Bidders, Bid evaluation shall be based on multiple weighted criteria for determining the highest scoring Bid for award. The selection criteria are cost (50-points), experience & overall capability (20-points), references (15-points), financial capacity (10-points), and prior project commitments (5-points). Based on review of the submitted Bidder qualifications, P. F. Moon & Company, Inc. was found to be a very well-qualified contractor for the project with more than adequate experience and financial capabilities and scored the maximum possible points for each selection category.

Carter & Sloope has determined that P. F. Moon & Company, Inc is the highest scoring Bidder for the project and recommends the project be awarded to P. F. Moon & Company, Inc. in the amount equal to the submitted Base Bid of \$3,440,000 which incorporates the full project scope of work without any deductions and incorporates all of the named Basis of Design major mechanical equipment manufacturers.

March 21, 2022

We are enclosing one copy of the Certified Bid Tabulation for your records and one copy of the Notice of Award. Please print four copies of the Notice of Award for execution and then return all copies to our Watkinsville office as soon as possible. Be sure to fill-in the Date of Issuance when executing each copy. Upon receipt, C&S will prepare four counterparts of the Agreement and forward them to the Authority after the Contractor has executed all counterparts and delivered the necessary Payment and Performance Bonds and Certificates of Insurance.

If you have any questions or need any additional information, please call us.

Sincerely,



Alex S. Wiseman, P.E.

encl: Certified Bid Tabulation – 1 copy
Notice of Award – 1 copy

cc: Mr. Rick Jones – CCWSA (by email)
Mr. Michael Bellew – CCWSA (by email)
Mr. John Stover – C&S Macon (by email)
File (w/ all encl.)

NOTICE OF AWARD

Date of Issuance: _____

Owner: Coweta County Water & Sewerage
Authority

Owner's Project No.: N/A

Engineer: Carter & Sloope, Inc.

Engineer's Project No.: C8400.002

Project: B.T. Brown Water Plant Improvements

Contract Name: Same as Project Name

Bidder: P. F. Moon & Company, Inc.

Bidder's Address: 2207 GA Hwy 103, West Point, GA 31833

You are notified that Owner has accepted your Bid dated **March 8, 2022**, for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

Furnishing all equipment and materials and to perform all labor necessary to install and construct all items as described in Section 01025 Item 3.1.A plus the lump sum price payment obligation to Meurer Research for goods and services described in Section 01025 Item 3.1.B plus furnishing all major materials and mechanical equipment listed in Section 01025 Item 3.1.C plus furnishing all allowance items identified in Section 01025 Item 3.1.D.

The Contract Price of the awarded Contract is **\$3,440,000.00**. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

4 unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **4** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): **None**

SECTION 00621 - 1
NOTICE OF AWARD

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **Coweta County Water & Sewerage Authority**

By *(signature)*: _____

Name *(printed)*: _____

Title: _____

Copy: Engineer

**BID TABULATION FOR ALL BIDS
RECEIVED ELECTRONICALLY
AT QUESTCDN (#8092924)
ON MARCH 8, 2022 AT 2:00 PM**

**CARTER & SLOOPE, INC
CONSULTING ENGINEERS
1031 STONEBRIDGE PARKWAY
WATKINSVILLE, GA 30677**

PROJECT: COWETA COUNTY WATER & SEWERAGE AUTHORITY BT BROWN WATER PLANT IMPROVEMENTS C&S PROJECT NO: C8400.002		BIDDERS:	P F Moon and Company Inc	Lakeshore Engineering, LLC	IHC Construction Companies, LLC
SECTION TITLE	ITEM DESCRIPTION	LUMP SUM	LUMP SUM	LUMP SUM	LUMP SUM
1. Water Plant Improvements Lump Sum	Bidder agrees to furnish all equipment and materials and to perform all labor necessary to install and construct all items as described in Section 01025-3.1.A.	\$2,022,635.50	\$2,325,000.00	\$2,646,000.00	
2. Procurement Contract Assignment Lump Sum	Lump sum price for Contractor's payment obligation to Meurer Research, a Parkson Corporation brand, as "Seller" for goods and services described in the Plate Settler Systems procurement contract.	\$367,237.50	\$367,237.50	\$367,237.50	
3. Major Materials and Mechanical Equipment					
3.1	Chemical Metering Pumps: Watson Marlow	\$30,000.00	\$32,100.00	\$30,000.00	
3.2	Chemical Transfer Pump: Watson Marlow	\$20,000.00	\$21,400.00	\$20,000.00	
3.3	Polyethylene Storage Tanks: Poly Processing	\$93,000.00	\$90,880.00	\$70,000.00	
3.4	FRP Storage Tanks: Justin Tanks	\$120,000.00	\$112,883.00	\$90,000.00	
3.5	Pre-Engineered Fiberglass Shelters: Shelter Works	\$30,000.00	\$32,100.00	\$30,000.00	
3.6	Filter Media: Leopold	\$82,000.00	\$92,587.00	\$70,000.00	
4. Allowances					
4.1	Testing	\$10,000.00	\$10,000.00	\$10,000.00	
4.2	SCADA	\$555,127.00	\$555,127.00	\$555,127.00	
4.3	Concrete Restoration	\$35,000.00	\$35,000.00	\$35,000.00	
4.4	Supplemental Work	\$75,000.00	\$75,000.00	\$75,000.00	
Base Bid Total: (Items 1 - 4)		\$3,440,000.00	\$3,749,314.50	\$3,998,364.50	

SECTION TITLE	ITEM DESCRIPTION	LUMP SUM	LUMP SUM	LUMP SUM
5. Accepted Equals and Substitues				
5.1	Chemical Transfer Pump: Verderflex (Accepted Equal)			
5.2	Polyethylene Storage Tanks: Snyder Industries (Accepted Equal)			
5.3	Polyethylene Storage Tanks: Assman Corporation (Accepted Equal)			
5.4	FRP Storage Tanks: Augusta Fiberglass (Accepted Equal)			
5.5	FRP Storage Tanks: Plas-Tanks Industries (Accepted Equal)			
5.6	FRP Storage Tanks: Associated Fiberglass Enterprises (Accepted Equal)			
5.7	Pre-Engineered Fiberglass Shelter: Kenco Plastics (Accepted Equal)			
5.8	Pre-Engineered Fiberglass Shelter: Tracom (Accepted Equal)			
5.9	Pre-Engineered Fiberglass Shelter: Associated Fiberglass Enterprises (Accepted Equal)			
5.10	Filter Media: Unifilt Corporation (Accepted Equal)			
5.11	Filter Media: Red Flint Sand & Gravel (Accepted Equal)			
Section 6 - Deductions				
6.1	Filter Media Replacement - Contractor shall provide one lump sum deduct for eliminating filter media replacement as described in Section 01025-3.1.F.1	\$95,000.00	\$200,000.00	\$75,000.00
6.2	Coating Remediation for D.I. process piping & structural steel: Contractor shall provide lump sum deduct for eliminating coating remediation as described in Section 01025-3.1.F.2.	\$135,000.00	\$145,000.00	\$45,000.00
6.3	Coating Remediation for Second Floor Rooms: Contractor shall provide lump sum deduct for eliminating coating remediation as described in Section 01025-3.1.F.3.	\$27,000.00	\$30,000.00	\$60,000.00
6.4	FRP Shelter & Hot Water Supply to Emergency Stations: Contractor shall provide one lump sum deduct for eliminating the pre-engineered FRP shelter as described in Section 01025-3.1.F.4.	\$45,000.00	\$33,500.00	\$33,000.00
6.5	Substitute Coating Materials: Contractor shall provide lump sum deduct for utilizing Sherwin-Williams products in lieu of the mfrs listed in Section 09900.2.1.A as described in Section 01025-3.1.F.5.	\$0.00	\$0.00	\$0.00

I hereby certify that this Bid Tabulation is a true and accurate representation of all Bids received on March 8, 2022.



Alex S. Wiseman, P.E. #31780

AQUATIC INFORMATICS – WIMS SOFTWARE LICENSE AGREEMENT

SCOPE

Coweta County Water and Sewerage
Authority ("**Subscriber**")
545 Corinth Rd.
Newnan, Georgia 30263

- and -

Aquatic Informatics Inc. ("Provider")
1999 Broadway, Suite 830
Denver, CO 80202

- A. This Software License Agreement (the "**Agreement**") is between Provider and you the customer of Provider seeking to license certain software in executable code form and obtain related services from Provider ("you" or "Customer").
- B. Provider is licensing certain software in executable code form including related professional services more particularly described in Schedule A ("the Software") upon the terms and conditions set out in this Agreement. By using the Software, you agree to abide by the terms of this Software License Agreement ("Agreement").
- C. This Agreement includes the following Schedules:
- Schedule A - Description of Software
 - Schedule B - License Term and payment terms
 - Schedule C - Support and Maintenance
 - Schedule D - Terms and Conditions

1. Software.

1.1 Provider grants to Customer, a license which permits Customer to use the Software in executable code format only and in the manner as described in this Agreement. The Software is licensed, not sold. Provider, and not Customer, owns the Software, which is protected by United States, Canadian and international copyright laws. Customer may use the Software only in the manner set out in this Agreement. This Agreement gives Customer no intellectual property rights in the Software.

1.2 Provider will support your use of the Software and will maintain the Software in the manner set out in Schedule C and this Agreement ("Support and Maintenance"). Such support and maintenance is provided on condition that you are current in all payments due to Provider.

1.3 On your request Provider may provide optional professional services ("PS") to you. Such PS will be provided on mutually agreed terms set out in a Schedule to this agreement, a Quote, or a Statements of Work (all described as "SOW") and may include, for example, Software installation, implementation and additional training. Additionally:

- (a) Your responsibilities and Provider responsibilities, project schedules, milestones, deliverables with respect to PS and its delivery will be set out in the SOW.
- (b) Provider's PS and the SOW will be provided on the basis of assumptions and information set out in the information you have provided to Provider. If such assumptions/information provided by you is incorrect then you acknowledge that milestones, schedules, deliverables or pricing of PS may require adjustment. If required, such adjustments will be mutually agreed in writing.
- (c) Charges for PS commenced in accordance with SOW milestones or schedules are non-cancellable once commenced. Unless this Agreement is terminated by Subscriber for cause, PS will be provided in accordance

with SOW milestones or schedules and charged on the basis of those milestones and schedules even if deliverables set out such SOW can not be delivered due to Subscriber's act, omission or delay.

1.4 Customer's responsibility generally are as follows.

- a) The Software is only for your use. You may not provide the Software to other parties in any manner, including as a service bureau or application service provider.
- b) In using the Software, You will adhere to all applicable laws, rules, and regulations.
- c) To use the Software You must create a user account associated with a real person. You are responsible for that user account's security, for all activities that occur under that account and for strictly monitoring who has user account access. You will immediately contact us if you believe a user account has been compromised or is being used by unauthorized persons.
- f) You may use the Software only in accordance with any documentation and acceptable use policies.
- g) Customer may not alter or modify the Software in any way

1.5 You are responsible for the accuracy, quality, integrity rights to use and legality of data processed using the Software. You are responsible for ensuring you have the right to use any data, text, audio, video, images, software, lab samples, operational readings, field readings, or other similar content ("Content") you input into the Software. More particularly it is your responsibility to ensure the following:

- a) that Your Content is compatible with then-current interfaces for the Software;
- b) that Your Content complies with the terms of this Agreement, with applicable law and regulation and any Provider policies made known to you; and
- c) that You are responsible for dealing with any legal claims relating to Your Content including any intellectual property-related claims.

1.6 No other services are provided with the Software unless mutually agreed to otherwise. Provider may modify this Agreement at any time by providing you at least 90 days advance notice. The modified terms will become effective on the terms as notified. By continuing to use the Software after the effective date of any Agreement modifications, you agree to be bound by the modified terms. If you do not agree to such modifications, you may terminate this Agreement without penalty to either party.

2. Fees and Payment

2.1. Fees charged for the Software license ("License Fees") and for the Support and Maintenance ("SMA Fees") are set out in Schedule B. All such fees are payable on a net 30 days basis without setoff or counterclaim, and without any deduction or withholding. Provider will notify you if there are any fees charged for new options applicable to the Software or if there are fee increases. Overdue invoices will accrue interest at the rate of 1.5% of the outstanding balance per month

3. Consequences of breach

3.1 Provider may terminate this Agreement and your license to use the Software if you breach the Agreement or use the Software in a way that: (i) poses a security risk to Provider or any third party, (ii) may adversely impact the Software, Provider or a third party's operations, (iii) may subject Provider or any third party to liability, or (iv) may be fraudulent; or (v) breaches applicable law or regulation. Provider will give Customer written notice of such breach. If such breach is not corrected in 30 days Provider may terminate this Agreement.

4. Term; Termination

4.1. The term of this Agreement pertaining to the Software license commences on the Effective Date and is for the length of time stated in Schedule B ("License Term"). If not stated in Schedule B the License Term will be for a perpetual term. The term of this Agreement pertaining to Support and Maintenance commences on the Effective Date and is for the length of time stated in Schedule B ("SMA Term"). If not stated in Schedule B the SMA Term will be for a one year term and will automatically renew for successive yearly periods unless a party notifies the other in writing not less than thirty (30) days prior to expiration of intent to not renew.

4.2 Additionally, this Agreement shall terminate in each of the following events:

- a) Either party may terminate this Agreement if the other becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or if a receiver or trustee in bankruptcy is appointed for the other, or if any proceeding in bankruptcy, receivership, or liquidation is instituted against the other and is not dismissed within 30 days following commencement thereof.
- b) Either party may terminate this Agreement for cause upon 30 days advance notice to the other if there is any material default or breach of this Agreement by the other, unless the defaulting party has cured the material default or breach within the 30 day notice period.

If this Agreement is terminated for cause by Customer, then Provider shall refund Customer any fees payable for Support and Maintenance ("SMA Fees") payable in advance of the effective date of termination. Upon termination for cause by Provider, Customer shall pay any unpaid fees covering the remainder of the SMA Term after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay any fees payable to Provider for the period prior to the effective date of termination.

4.3. Any post-termination assistance additional to that described below is subject to mutual written agreement.

- a) Generally. Upon any termination of this Agreement:
 - (i) all your rights under this Agreement immediately terminate;
 - (ii) you remain responsible for all fees you have incurred through the date of termination, including fees for in-process tasks completed after the date of termination;
 - (iii) you will immediately return or, if instructed by us, destroy all Provider Content in your possession.

5. Proprietary Rights and confidentiality

5.1 Ownership.

- a) "Proprietary Information" means the Software, any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, mask works and artwork, which Provider considers proprietary. All Proprietary Information and intellectual property rights, title and interest, including copyright and trade secret rights in and to anything associated with the Service Offering and the Provider Content remains that of Provider. As between Provider and Customer, Customer exclusively owns all rights, title and interest in and to all of Customer's Content. No right or license is granted hereby to Subscriber or its customers, employees or agents, expressly or by implication, with respect to the Proprietary Information or any patent, patent application or other proprietary right of Provider, except for the limited use licenses implied by law.
- b) Customer shall not (i) permit any third party to access the Software except as expressly permitted, (ii) create derivative works based on the Software, (iii) copy, frame or mirror any part or content of the Software, (iv) reverse engineer the Software, or (v) access the Software in order to build a competitive product or service, or copy any features, functions or graphics of the Software.
- c) Using the Software it is possible to collect aggregated anonymized data which is collected and stored without association with Personally Identifiable Information ("PII") and does not identify Customer in any way ("Aggregated Data"). All Aggregated Data is the property of Provider and treated as Confidential Information.

5.2 "Confidential Information" means information concerning any information relating to the business and technology of either party which is not generally available to third parties and which is treated by the parties, in accordance with their policies, as confidential information or a trade secret and specifically includes the Software, either parties Content, business processes, information about either parties customers or users in any manner, shape or form or other like information. For the purposes of this Agreement, a party disclosing Confidential Information is a Discloser and the party receiving Confidential Information is a Recipient. Confidential Information does not include information which is: at the time of disclosure, or thereafter becomes part of the public domain without any violation of this Agreement by the Recipient; already in the Recipient's possession before disclosure of such information to the Recipient by the Discloser; following the date of this Agreement is furnished to the Recipient by a third party without that third party being in

breach directly or indirectly of an obligation to the Discloser to keep such information secret confidential and secret; and developed independently by the Recipient without use of Discloser's Confidential Information as evidenced by reasonably detailed written records.

5.3 Confidentiality. The following terms apply to Confidential Information and the ownership thereof. All Confidential Information is owned by the respective parties. Neither party will, at any time, whether before or after the termination of this Agreement, disclose, furnish, or make accessible to anyone any Confidential Information or permit the occurrence of any of the foregoing. Each party will hold the other's Confidential Information in confidence and will protect each other's Confidential Information with the same degree of care with which it treats its own Confidential Information, but in no case with any less degree than reasonable care. For certainty, Recipient and its customers, employees and agents will keep confidential all such Proprietary Information obtained directly or indirectly from Provider and will not transfer or disclose it without Providers prior written consent, or use it for the manufacture, procurement, servicing or calibration of Work or any similar products, or cause such products to be manufactured, serviced or calibrated by or procured from any other source, or reproduce or otherwise appropriate it without Provider's prior written consent. Confidential Information may be disclosed to a party only to employees or consultants having a need-to-know provided such parties are bound by confidentiality obligations. If Confidential Information is disclosed inadvertently the disclosing party will immediately notify the other party and will assist the other party in remedying the confidentiality breach. If Confidential Information is required to be disclosed pursuant to a valid subpoena, governmental order, judicial order or other operation of law the disclosing party will immediately notify the other party and will assist the other party seeking a protective order or other similar appropriate remedy in order to limit the Confidential Information disclosure to the extent possible or practicable

6. Miscellaneous.

6.1 The parties acknowledge that each is an independent contractor and nothing in this Agreement constitutes a joint venture or partnership and neither party has the right to bind nor act for the other as agent or in any other capacity.

6.2 Sections 5 and 6 and any other sections that may be reasonably construed as intended to survive shall survive termination of this Agreement.

6.3 Upon consent by Provider, this Agreement may be used for cooperative procurement by any public or municipal body, entity, agency or institution, If so authorized, and in order to forego a related entity RFP or similar competitive bidding process, the Agreement may be extended to such other entities for the procurement of similar products and/or services provided to Customer and at fees in accordance with the Agreement unless separately negotiated between such other entities and Provider. Further related entities participating in a cooperative procurement process shall place their own orders directly with Provider. Provider and such other entities will fully and independently administer their own separate contracting processes but all in accordance with substantially similar contracting processes as set out in this Agreement.

Provider and Customer have executed this Agreement as of the date below.

AQUATIC INFORMATICS

Date: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

COWETA COUNTY WATER AND SEWERAGE AUTHORITY GA

Date: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

Schedule A
Description of Software obtained by Customer

Description of Software Provided (See Schedule B for License Fee & Payment Terms):

WIMS License = SEE QUOTE #0011284 dated February 21, 2022.

Description of Professional Services Provided (See Schedule B for Payment Terms):

WIMS Implementation & Training Services = SEE QUOTE #0011284 dated February 21, 2022.

Schedule B
License Fee, SMA Fee and payment terms

1 License Term

1.1 This Agreement commences begins when AI sends login credentials to the Customer (Table 1). The License Term begins regardless of whether or not the Professional Services (Table 2) have been delivered.

1.2 The License Term is perpetual. The term under which Support and Maintenance is provided to Customer ("SMA Term") is for one (1) year, and thereafter renews automatically for successive one (1) year periods unless either party gives the other party 30 days written notice of its intent not to renew this Agreement prior to the expiration of the then current term.

2 Payment Terms

2.1 The License Fee is payable on the date when Provider sends login credentials to Customer (Table 1):

2.2 Professional Services and One-Time Fees are payable on delivery of services unless stated otherwise (Table 2).

Table 1. License Fee

Software module	License Fee
SEE QUOTE #0011284 dated February 21, 2022.	
Total One-Time License Fee	\$13,617.00

Table 2. Professional Services Offering and One-Time Fees

Services	One-Time Cost
SEE QUOTE #0011284 dated February 21, 2022.	
Total One-Time Cost for Services	\$59,890.00

Schedule C Support and Maintenance of Software

Support and maintenance is provided with the Software.

Provider will maintain the Software at the latest release making new enhancements and improvements available as part of Provider's development methodology. In addition to regular maintenance of the Software, Provider will support you by answering queries from technically-trained users designated by you and resolve such queries in a manner set out below

1.0 DEFINITIONS

- (a) **"Case priority 1"** means the Software has a system outage or does not work per user documentation, business operations have been severely disrupted and no work around is immediately available;
- (b) **"Case priority 2"** means the Software does not work per user documentation, business operations can continue in a restricted fashion (although long-term productivity might be adversely affected) and no work around is immediately available;
- (c) **"Case priority 3"** means the Software does not work per user documentation, impaired operations of some components, but allows the user to continue using the software, a work around exists but it is not obvious or is difficult and as a result there is significant impact productivity or efficiency;
- (d) **"Case priority 4"** means the Software does not work per user documentation, business operations are not significantly impacted;
- (e) **"Case priority 5"** means the Software does not work per user documentation and does not affect business operations or software does not work as expected and is not in user documentation or is an enhancement request;
- (f) **"Documentation"** means the instruction manual or help on the Software;
- (g) **"Minor Release"** means a release of Software containing bug fixes or other small software changes provided by Provider for the correction of Software anomalies, and made available to the Customer;
- (h) **"Major Release"** means a release of Software containing new or improved functionality, and made available to the Customer;
- (i) **"Operating Hours"** are 8:00 am – 8:00 pm (Mon – Fri) Eastern Time excluding Provincial, Canadian, State and US statutory holidays and 9:00 am - 5:00 pm (Mon – Fri); Australian Eastern Standard Time excluding Tasmanian and Australian statutory holidays;
- (j) **"Resolution"** means one or more of the following outcomes: a) a mutually acceptable work around, b) a configuration/data change or c) a Software Change;
- (k) **"Software Change"** means changes to Software functionality;
- (l) **"Supported Release"** means the current, generally available Major Release of the Software or one of its two previous Major Releases.

2.0 SUPPORT AND MAINTENANCE SERVICES

2.1 Description of Services. During any SMA Term and subject to the provisions of this Agreement, Provider will use commercially reasonable efforts to provide the following Support and Maintenance Services:

- (a) Live telephone support with a support representative during Operating Hours;
- (b) Email support during Operating Hours;
- (c) Live Web conferencing with a support representative during Operating Hours where required to understand the support case;
- (d) Case tracking through our online case tracking system;
- (e) Access to an online Support Portal 24 hours a day, 7 days a week; and
- (f) Entitlement to download and use each new Major and Minor Release of the Software for which you have obtained licenses.

2.2 Support Service Level Agreement

Case Priority	Initial Response	Target Time to Resolution
1	1 business day or sooner	3 business days
2	1 business day	5 business days
3	1 business day	10 business days
4	1 business day	At Provider's discretion
5	At Provider's discretion	At Provider's discretion

- (a) A Software Change is only released before the next scheduled Major Release when the Software Change is the only way to resolve a priority 1 or 2 case;
- (b) A Software Change is only released for compatibility with the current Major Release or one of the two previous Major Releases.
- (c) If you are experiencing issues and not using a Supported Release of the Software, you must upgrade to a Supported Release (preferably the latest Supported Release) and then, if the original case persists, Provider will work with you to find a mutually acceptable resolution.
- (d) You must check on the Provider Support Portal to determine if you are using a Supported Release
- (e) Initial Response and Target Time to Resolution time periods start once a case is logged in Provider's Support Portal.
- (f) Resolution times may exceed the Target Time to Resolution time targets depending on the complexity involved in determining the root cause of the case and the complexity of finding a resolution for it.

2.3 Resolution of Software Anomaly. A Software anomaly will be considered to be resolved when:

- (a) the Software is working in substantial accordance with the Documentation when operated on the supported hardware, operating system and peripheral as designated by Provider; or
- (b) Provider has advised you of one of the following:
 - (i) how to correct or bypass the Software anomaly;
 - (ii) that the correction to the Software anomaly will be available through a future Major or Minor Release; or
 - (iii) that the anomaly falls within an exception to this Agreement.

3.0 EXCEPTIONS

3.1 Support and Maintenance Exclusions. Maintenance and Support Services are not provided for and do not apply to:

- (a) third party software and middleware or services;
- (b) when you are in breach of this Agreement or any other agreement with Provider;
- (c) Software that is improperly implemented;
- (d) Hardware, peripherals (including printers) or software other than the Software;
- (e) Anomalies in the Software that are not reproducible; or
- (f) Anomalies, damage or problems in the Software or its operation caused by:
 - i. an incompatible or non-functioning configuration, operating system or hardware system;
 - ii. accident, abuse or misapplication for which Provider is not responsible;
 - iii. malfunction or non-performance of products supplied by third parties;
 - iv. use contrary to its intended purpose or contrary to the Documentation; or
 - v. any other matters beyond Provider's control.

- 3.2 Third Party Vendors. If Provider has corrected a Software anomaly in a Minor Release or Major Release provided to you, then Provider will not be required to provide any other correction for the Software anomaly provided that the functionality of the Software has been maintained in relation to your business requirements. You will look solely to the third party vendors of third party software, middleware, hardware or peripheral if there are any anomalies, damage or problems to the Software in or caused by such software, middleware, hardware and/or peripheral.
- 3.3 Interfaces. Provider will not be responsible for any of your integration requirements for the Software resulting from your use of third party vendors who may not integrate with the Software.
- 3.4 Inactive Support and Maintenance. Support and Maintenance only applies to customers with a valid and current SMA Term in place, and who are in good standing with Provider's accounting, finance and payment terms.
- 4.0 SUPPORT AND MAINTENANCE PERIODS AND FEES
- 4.1 Renewal. Additional 12 month service periods are available following the expiry of a SMA Term. Prior to the expiry of a Support and Maintenance service period, Provider may at its discretion send you an invoice for renewal of Support and Maintenance for the applicable SMA Term at the applicable SMA Fee. Failure to pay the invoice within the payment terms as detailed on the invoice will be deemed a rejection by you of the offered Support and Maintenance and will result in termination of Support and Maintenance upon expiration of the then-current SMA Term.
- 4.2 Taxes. The SMA Fees do not include taxes. If Provider is required to pay sales, use, property, value-added, goods and services or other federal, provincial, state or local taxes based on the license granted under this Agreement or on your use of the Software or documentation, then such taxes will be billed to and paid promptly by you.

SCHEDULE D

Terms and Conditions of Sale

This document sets forth the Terms & Conditions of Sale for goods manufactured and/or supplied, and services provided, by Aquatic Informatics ULC or other selling entity listed on the accompanying software, service or other agreement accompanying these Terms and Conditions ("Seller") and sold to the original purchaser thereof ("Buyer"). Unless otherwise specifically stated in a previously-executed written purchase agreement signed by authorized representatives of Seller and Buyer, these Terms & Conditions of Sale establish the rights, obligations and remedies of Seller and Buyer which apply to this offer and any resulting order or contract for the sale of Seller's goods and/or services ("Work").

1. APPLICABLE TERMS & CONDITIONS

These Terms & Conditions of Sale are contained directly and/or by reference in Seller's offer, order acknowledgment, and invoice documents. The first of the following acts constitutes an acceptance of Seller's offer and not a counteroffer and creates a contract of sale ("Contract") in accordance with these Terms & Conditions: (i) Buyer's issuance of a purchase order document against Seller's offer; (ii) acknowledgement of Buyer's order by Seller; or (iii) commencement of any performance by Seller pursuant to Buyer's order. Provisions contained in Buyer's purchase documents (including electronic commerce interfaces) that materially alter, add to or subtract from the provisions of these Terms & Conditions of Sale are not a part of the Contract.

2. PRICES

All prices, unless stated otherwise, are in U.S. dollars and are based on delivery as stated above unless otherwise quoted by Seller. Prices do not include any charges for services such as insurance; brokerage fees; sales, use, inventory or excise taxes; import or export duties; special financing fees; VAT, income or royalty taxes imposed outside the U.S.; consular fees; special permits or licenses; or other charges imposed upon the production, sale, distribution, or delivery of the Work. Buyer will either pay any and all such charges or provide Seller with acceptable exemption certificates, which obligation survives performance under this Contract.

3. LIMITED WARRANTY

Seller warrants that Work sold hereunder will be free from defects in material and workmanship and will, when used in accordance with the manufacturer's operating and maintenance instructions, conform to any express written warranty pertaining to the specific Work purchased. Seller warrants that Work furnished hereunder will be free from defects in workmanship for a period of ninety (90) days from the completion of the Work. Parts provided by Seller in the performance of services may be new or refurbished parts functioning equivalent to new parts. Any non-functioning parts that are repaired by Seller shall become the property of Seller. All other guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial usage or otherwise, including implied warranties of merchantability and fitness for a particular purpose, are hereby excluded. The sole remedy for Work not meeting this Limited Warranty is at Seller's option: repair, replacement, or credit or refund of the purchase price. This remedy will not be deemed to have failed of its essential purpose so long as Seller is willing to provide such replacement, credit or refund.

4. INDEMNIFICATION

Any and all indemnification obligations imposed upon Seller are limited to the extent of those damages proportionately caused by Seller's breach of the Agreement, negligence, wrongful conduct, or violations of law. In no case is Seller liable for any damages caused by negligence, misuse or misapplication of goods or services by others. Buyer shall defend, indemnify and hold harmless Seller against any and all damages to the extent caused by misuse or misapplication of Work, breach of this Agreement, negligence, wrongful conduct, or violations of law by Buyer or its affiliates or those employed by, controlled by or in privity with them, and Buyer agrees to so defend and indemnify Seller.

5. PATENT PROTECTION

Subject to all limitations of liability provided herein, Seller will, with respect to any Work of Seller's design or manufacture, indemnify Buyer from any and all damages and costs as finally determined by a court of competent jurisdiction in any suit for infringement of any Canadian or U.S. patent (or European patent for Work that Seller sells to

Buyer for end use in a member state of the E.U.) that has issued as of the delivery date, solely by reason of the sale or normal use of any Work sold to Buyer hereunder and from reasonable expenses incurred by Buyer in defense of such suit if Seller does not undertake the defense thereof, provided that Buyer promptly notifies Seller of such suit and offers Seller either (i) full and exclusive control of the defense of such suit when Work of Seller only are involved, or (ii) the right to participate in the defense of such suit when products other than those of Seller are also involved. Seller's warranty as to use patents only applies to infringement arising solely out of the inherent operation of the Work according to their applications as envisioned by Seller's specifications. In case the Work are in such suit held to constitute infringement and the use of the Work is enjoined, Seller will, at its own expense and at its option, either procure for Buyer the right to continue using such Work or replace them with non-infringing products, or modify them so they become non-infringing, or remove the Work and refund the purchase price (prorated for depreciation) and the transportation costs thereof. The foregoing states the entire liability of Seller for patent infringement by the Work. Further, to the same extent as set forth in Seller's above obligation to Buyer, Buyer agrees to defend, indemnify and hold harmless Seller for patent infringement related to (a) any goods manufactured to the Buyer's design, (b) services provided in accordance with the Buyer's instructions, or (c) Seller's work when used in combination with any other devices, parts or software not provided by Seller hereunder.

6. SOFTWARE AND DATA

All licenses to Seller's separately-provided software products are subject to the separate software license agreement(s) accompanying the software media. Except to the extent such express licenses conflict with the remainder of this paragraph, the following also applies relative to Seller's software : Seller grants Buyer only a personal, non-exclusive license to access and use the software provided by Seller with Work purchased hereunder solely as necessary for Buyer to enjoy the benefit of the Work. A portion of the software may contain or consist of open source software, which Buyer may use under the terms and conditions of the specific license under which the open source software is distributed. Buyer agrees that it will be bound by all such license agreements. Title to software remains with the applicable licensor(s). In connection with Buyer's use of Work, Seller may obtain, receive, or collect data or information, including data produced by the Work. In such cases, Buyer grants Seller a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license to use, compile, distribute, display, store, process, reproduce, or create derivative works of such data, or to aggregate such data for use in an anonymous manner, solely to facilitate marketing, sales and R&D activities of Seller and its affiliates.

7. EXPORT AND IMPORT LICENSES AND COMPLIANCE WITH LAWS AND RELATED COMPANY POLICIES

Unless otherwise specified in this Contract, Buyer is responsible for obtaining any required export or import licenses. Seller represents that all Work delivered hereunder will be produced and supplied in compliance with all applicable laws and regulations. Buyer will comply with all laws and regulations applicable to the installation or use of all Work, including applicable import and export control laws and regulations of the U.S., E.U., and any other country having proper jurisdiction, and will obtain all necessary export licenses in connection with any subsequent export, re-export, transfer and use of all Work and technology delivered hereunder. Buyer will not sell, transfer, export or re-export any Seller Work or technology for use in activities which involve the design, development, production, use or stockpiling of nuclear, chemical or biological weapons or missiles, nor use Seller Work or technology in any facility which engages in activities relating to such weapons. Buyer will comply with all local, national, and other laws of all jurisdictions globally relating to anti-corruption, bribery, extortion, kickbacks, or similar matters which are applicable to Buyer's business activities in connection with this Contract, including but not limited to the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"). Buyer agrees that no payment of money or provision of anything of value will be offered, promised, paid or transferred, directly or indirectly, by any person or entity, to any government official, government employee, or employee of any company owned in part by a government, political party, political party official, or candidate for any government office or political party office to induce such organizations or persons to use their authority or influence to obtain or retain an improper business advantage for Buyer or for Seller, or which otherwise constitute or have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business or any improper advantage, with respect to any of Buyer's activities related to this Contract. Seller asks Buyer to "Speak Up!" if aware of any violation of law, regulation or our Standards of Conduct ("SOC") in relation to this Contract. See <http://danaher.com/integrity-and-compliance> and www.danaherintegrity.com for a copy of the SOC and for access to our Helpline portal.

8. FORCE MAJEURE

Seller is excused from performance of its obligations under this Contract to the extent caused by acts or omissions that are beyond its control, including but not limited to Government embargoes, blockages, seizures or freeze of assets, delays or refusals to grant an export or import license or the suspension or revocation thereof, or any other acts of any Government; fires, floods, severe weather conditions, or any other acts of God; quarantines; labor strikes or lockouts; riots; strife; insurrections; civil disobedience or acts of criminals or terrorists; war; material shortages or delays in deliveries to Seller by third parties. In the event of the existence of any force majeure circumstances, the period of time for delivery, payment terms and payments under any letters of credit will be extended for a period of time equal to the period of delay. If the force majeure circumstances extend for six months, Seller may, at its option, terminate this Contract without penalty and without being deemed in default or in breach thereof.

9. NON-ASSIGNMENT AND WAIVER

Buyer will not transfer or assign this Contract or any rights or interests hereunder without Seller's prior written consent. Failure of either party to insist upon strict performance of any provision of this Contract, or to exercise any right or privilege contained herein, or the waiver of any breach of the terms or conditions of this Contract will not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same will continue and remain in force and effect as if no waiver had occurred.

10. LIMITATION OF LIABILITY

None of the Seller Indemnified Parties will be liable to Buyer under any circumstances for any special, treble, incidental or consequential damages, including without limitation, damage to or loss of property other than for the Work purchased hereunder; damages incurred in installation, repair or replacement; lost profits, revenue or opportunity; loss of use; losses resulting from or related to downtime of the products or inaccurate measurements or reporting; the cost of substitute products; or claims of Buyer's customers for such damages, howsoever caused, and whether based on warranty, contract, and/or tort (including negligence, strict liability or otherwise). The total liability of the Seller Indemnified Parties arising out of the performance or nonperformance hereunder or Seller's obligations in connection with the design, manufacture, sale, delivery, and/or use of Work will in no circumstance exceed in the aggregate a sum equal to twice the amount actually paid to Seller for Work delivered hereunder.

11. APPLICABLE LAW AND DISPUTE RESOLUTION

The construction, interpretation and performance hereof and all transactions hereunder shall be governed by the laws of the Province of British Columbia, without regard to its principles or laws regarding conflicts of laws. If any provision of this Contract violates any Federal, State or local statutes or regulations of any countries having jurisdiction of this transaction, or is illegal for any reason, said provision shall be self-deleting without affecting the validity of the remaining provisions. Unless otherwise specifically agreed upon in writing between Seller and Buyer, any dispute relating to this Contract which is not resolved by the parties shall be adjudicated in order of preference by a court of competent jurisdiction (i) in the Province of British Columbia, if Buyer has minimum contacts with British Columbia and, (ii) elsewhere in Canada if Buyer has minimum contacts with Canada, but not British Columbia, (iii) in the State of New York if Buyer does not have minimum contacts with Canada.

12. FUNDS TRANSFERS. Buyer and Seller both recognize that there is a risk of banking fraud when individuals impersonating a business demand payment under new banking or mailing instructions. To avoid this risk, Buyer must verbally confirm any new or changed bank transfer or mailing instructions by calling Seller and speaking with Seller's accounts receivable contract before mailing or transferring any monies using the new instructions. Both parties agree that they will not institute mailing or bank transfer instruction changes and require immediate payment under the new instructions but will instead provide a ten (10) day grace period to verify any payment instruction changes before any new or outstanding payments are due using the new instructions.

13. ENTIRE AGREEMENT & MODIFICATION

These Terms & Conditions of Sale and accompanying software or service agreement constitute the entire agreement between the parties and supersede any prior agreements or representations, whether oral or written. No change to or

modification of these Terms & Conditions shall be binding upon Seller unless in a written instrument specifically referencing that it is amending these Terms & Conditions of Sale and signed by an authorized representative of Seller. Seller rejects any additional or inconsistent Terms & Conditions of Sale offered by Buyer at any time, whether or not such terms or conditions materially alter the Terms & Conditions herein and irrespective of Seller's acceptance of Buyer's order for the described goods and services.