General Contract Terms and Conditions

The Contractor covenants and agrees to provide the County with the scope of work as outlined in the contract documents, including but not limited to labor, equipment, materials and other items necessary to perform the Work. The services provided under this Agreement will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the Contractor's profession currently practicing under similar conditions.

1. Invoicing and Taxes

1.1 The County agrees to pay the Contractor within 35 days of date of receipt per Minnesota State Statute #471.425 subd 2a. "Date of receipt" means the completed delivery of the goods or services or the satisfactory installation, assembly or specified portion thereof, or the receipt of the invoice for the delivery of goods or services, whichever is later. The Contractor's invoice shall include the County's contract number.

1.2 Per Minnesota State Statute 297A.70, Olmsted County is exempt from the current State and City of Rochester imposed sales tax rate. When purchasing commodity like goods or materials from a wholesaler, manufacturer or retailer, the County will provide an ST3 tax exemption form.

1.3 Olmsted County is not exempt from sales tax on construction materials and/or equipment for projects and shall be included in the contract amount. The County will not appoint any Contractor or Sub Contractor as a "Purchasing Agent". Please see MN Revenue Sales Tax Fact Sheet 17.10 for more information. For work at the Olmsted County Waste to Energy Facility (OWEF) please see section 1.4.

1.4 The Olmsted County Waste to Energy Facility has certain sales tax exemptions as a Resource Recovery Facility. This exemption can be passed on to the Contractor when the County provides an ST3 to vendor claiming Resource Recovery is the reason for exemption. No "Purchasing Agent" relationship is needed in this case. The Resource Recovery Facility exemption is limited to purchases (or rental) of equipment (and repair parts for that equipment) used only in the processing of waste, such as the boiler. The resource recovery activity ends once the energy has been produced.

1.5 Financial obligations of the County, payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Olmsted County may cancel or reduce the amount of services to be rendered if the County determines that such action is in the County's best interest, or that there will be a lack of funding available for the service. In such event, Olmsted County will notify the Bidder in writing thirty (30) days in advance of the date such cancellation or reduction is to be effective.

2. County Right of Setoff

2.1 If the Contractor is more than 30 days past due on any account due to the County, the County may apply payments due to the Contractor under this Agreement to the Contractor's overdue account in lieu of payment directly to the Contractor. The application of payments to the overdue account shall be deemed payments due under this Agreement.

3. Conflict of Interest

3.1 No employee, officer or agent of Olmsted County shall participate in the administration, of this Agreement if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when one of the following has a financial or other interest in Contractor:

3.1.1 The employee, or an officer or agent of the employee;

3.1.2 Any member of the employee's immediate family;

3.1.3 The employee's business partner; or

3.1.4 An organization which employs, or is about to employ, any of the above.

3.2 Olmsted County's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, subcontractors, or other parties to sub agreements whereby the intent could reasonably be inferred as influencing the employee in the performance of his or her duties or was intended as a reward for any official act on his or her part.

4. Ownership of Instruments of Service

4.1 All reports, plans, specifications, field data and notes documents and other work product, including all electronic media, prepared by Contractor, as instruments of service for the County pursuant to this Agreement shall remain the property of the County.

5. Independent Contractor

5.1 Contractor is an Independent Contractor. Nothing contained in this Agreement is intended or should be construed as creating the relationship of co-partners or joint ventures with the County. No tenure or any rights or benefits, including workers' compensation, unemployment insurance, medical care, sick leave, vacation leave, severance pay, or other benefits available to the County employees, shall accrue to Contractor or employees of Contractor performing services under this Agreement.

6. Legal Compliance

6.1 Non-Discrimination. No person shall, on the ground of race, color, religion, age, sex, disability, marital status, public assistance status, affectional preference, familial

status, ancestry, creed, or national origin be excluded from full employment rights in, participation in, be denied the benefits of or be otherwise subjected to discrimination under any and all applicable Federal and State laws against discrimination.

6.2 Data Privacy. For purposes of this Agreement all data created, collected, received, stored, used, maintained, or disseminated by Contractor in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as the Federal laws on data privacy. If Contractor is performing a governmental function as defined in Minn. Stat. Section 13.05, Subd. 11 as part of its contract duties, it must comply with those requirements as if it were a governmental entity. The remedies in Minn. Stat. Section 13.08 apply to the Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the County, except as required by the terms of this Agreement. All subcontracts shall contain the same or similar data practices compliance requirements.

6.3 Business Records. Contractor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession. Contractor shall maintain such records for at least 6 years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period. All accounting records shall be kept in accordance with generally accepted accounting practices. County shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice. These records are subject to examination, duplication, transcription and audit by County and either the Legislative or State Auditor of the State of Minnesota pursuant to Minnesota Statute § 16C.05, subd 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement.

6.4 Laws and Regulations. Contractor shall comply with all applicable federal and state statutes and regulations as well as local ordinances now in effect or hereafter adopted.

6.5 Worker Health, Safety and Training. Contractor shall be solely responsible for the health and safety of its employees in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subcontractors and other persons who may perform work in connection with this Contract. Contractor shall ensure all personnel of Contractor and subcontractors are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks engaged in under this Contract. Contractor shall comply with federal, state and local occupational safety and health standards, regulations and rules promulgated pursuant to the Occupational Health and Safety Act which are applicable to the work to be performed by Contractor.

6.6 Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS). Effective January 1, 2025, the Contractor shall ensure that all products comply with the requirements of Minnesota Statute 116.943, § Subdivision 5, which prohibits the sale or distribution of any product containing intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS). This currently includes, but is not limited to, the following:

(1) carpets or rugs;
(2) cleaning products;
(3) cookware;
(4) cosmetics;
(5) dental floss;
(6) fabric treatments;
(7) juvenile products;
(8) menstruation products;
(9) textile furnishings;
(10) ski wax; or
(11) upholstered furniture.

The Contractor shall provide certification upon request that all products meet this standard. If a product is found to be non-compliant, the Contractor shall be responsible for the removal, replacement, and reimbursement of the County for any associated costs which it incurs to ensure compliance with this statute. However pursuant to Minnesota Statutes Section 116.943, § Subdivision 8, this PFAS prohibition shall not apply to 1) a product for which federal law governs the presence of PFAS in the product in a manner that preempts state authority, 2) firefighting foam regulated under Minnesota Statutes Section 325F.072, 3) food packaging regulated under Minnesota Statutes Section 325F.075, 4) the sale or resale of a used product, or 5) a prosthetic or orthotic device or to any product that is a medical device or drug other that is otherwise used in a medical setting or in a medical application regulated by the United States Food and Drug Administration.

7. Indemnification

7.1 Contractor agrees to protect, defend, indemnify and hold Olmsted County, its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character (hereinafter collectively "claims") arising directly out of the Contractor's negligent acts, errors or omissions, or from the legal fault of the Contractor in the performance of this Agreement and those of its subcontractors or anyone for whom Contractor is legally liable. This includes, but is not limited, to any and all such claims, relating to personal injury, infringement of any patent, trademark, copyright (or application for any thereof) or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court.

7.2 Contractor further agrees to investigate, handle, respond to, provide defense for, and defend any such claims, at its sole expense and agrees to bear all other costs and expenses related thereto, whether or not it is alleged or determined that the Contractor was negligent, and without regard to whether such claim is groundless, false, or fraudulent. Contractor agrees to reimburse County for defense costs, including reasonable attorney's fees, on a comparative fault basis.

8. Insurance

8.1 The Contractor shall purchase, provide and maintain, at its own expense, such insurance as indicated in the Contract Documents.

9. Contract Modifications

9.1 Oral change orders will not be permitted. No change in the Agreement shall be made unless Olmsted County gives its prior written approval. Contractor shall be liable for all costs resulting from, and/or for satisfactorily correcting, any change not properly ordered by written modification to the Agreement and signed by Olmsted County. Within seven (7) calendar days after receipt of the written change order to modify the Agreement, Contractor shall submit to Olmsted County a detailed price and schedule proposal for the work to be performed. This proposal shall be subject to negotiations between Contractor and Olmsted County. After the proposal is accepted by the County, detailed modifications shall be executed in writing by both parties. Disagreements that cannot be resolved with negotiations shall be resolved in accordance with the contract disputes clause, herein.

9.2 The Contractor's overhead and profit mark-up shall not exceed 10% for any change.

9.3 The Contractor shall be responsible for furnishing adequate documentation regarding any submitted change orders. This documentation shall include, at a minimum, the following information:

9.3.1 Reference to the Owner's contract number and/or purchase order number.

9.3.2 The sequential number of the change order.

9.3.3 A detailed description regarding what the change order is for.

9.3.4 Any associated material and equipment costs.

9.3.5 Any associated labor costs, line itemed by number of hours at each employee role hourly rate applicable to the change order.

9.3.6 Any overhead and profit markup percentage for the prime Contractor's material, equipment, and/or labor costs.

9.3.7 Any subcontractors to the prime Contractor, individually line itemed to identify the change order cost per subcontractor.

9.3.8 Any profit markup percentage for the subcontractor's material, equipment, and/or labor costs assessed from the prime Contractor.

9.3.9 Any applicable sales tax and any applicable payment and performance bond fee increase.

9.3.10 Any contract schedule impacts due to the change order, as identified in the number of business days impacted.

9.3.11 Any relevant drawings or other documentation.

10. Dispute Resolution

10.1 In the event of a dispute between the Contractor and the County, the parties shall engage in mediation of the dispute. The Contractor and the County shall select an independent, mutually acceptable third party to mediate the matter. This independent third party shall mediate the dispute, and failing to reach an agreement, shall have exclusive and final jurisdiction to render a decision in a dispute with a monetary value not to exceed $25,000. In a dispute in excess of this amount, the parties may agree to an arbitrator or submit the dispute to Olmsted County District Court or any applicable federal court with jurisdiction. The Contractor and the County will split the cost of mediation or arbitration, with each party paying half the cost.

11. Waiver of Terms and Conditions

11.1 The failure of Olmsted County or Contractor to enforce one or more of the terms or conditions of the Agreement or to exercise any of its rights or privileges, or the waiver by Olmsted County of any breach of such terms or conditions, shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no waiver had occurred.

12. Assignment of Contractual Rights

12.1 It is agreed that the Contractor will not assign, transfer, convey or otherwise dispose of the Agreement or its right, title or interest in or to the same, or any part thereof, without previous written consent of Olmsted County and any sureties, and subject to such conditions and provisions as the County may deem necessary. The Contractor shall be responsible for the performance of all subcontractors.

13. Interpretation, Jurisdiction, and Venue

13.1 All contractual agreements shall be subject to, governed by, and construed and interpreted solely according to the laws of the State of Minnesota. The Contractor hereby consents and submits to the jurisdiction of the appropriate courts of Minnesota or of the United States having jurisdiction in Minnesota for adjudication of any suit or cause of action arising under or in connection with the contract documents, or the performance of such Agreement, and agrees that any such suit or cause of action may be brought in any such court.

14. Severability

14.1 To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

15. Termination

15.1 The Agreement may be terminated by the mutual consent of both parties, or by either party upon 30 days unless otherwise noted on the Contract Signature Page, with or without cause, by notifying the authorized representative.

15.2 The County may terminate this Agreement effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County, under any of the following conditions:

15.2.1 If County funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services. The Agreement may at the County's option or in the County's sole discretion be modified to accommodate a reduction in funds.

15.2.2 If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

15.2.3 If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.

15.3 Any such termination of the Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

15.4 Time is of the essence in this agreement and failure by the Contractor to perform its obligations in a timely manner may be considered by the County to be a material breach of this agreement. The County by written notice of default (including breach of contract) to the Contractor may terminate the whole or any part of this agreement:

15.4.1 If the Contractor fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or

15.4.2 If the Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from the County, fails to correct such failures within a period of 10 calendar days or such longer period as the County may authorize in writing after receipt of notice from the County specifying such failure. If the County grants Contractor an extension of time to perform, any such extension of time shall not operate to release any surety from its obligations; or

15.4.3 If Contractor admits in writing it is bankrupt, or by a filing by the Contractor of a voluntary petition under the Federal Bankruptcy Act; or the filing of an involuntary petition under the Federal Bankruptcy Act against the Contractor, unless dismissed within ninety (90) days; or

15.4.4 If the Contractor makes any arrangement with or for the benefit of Contractor's creditors involving an assignment to a trustee, receiver or similar beneficiary; or

15.4.5 If the Contractor makes any material misrepresentations in the documents provided and relied upon by the County in the making of this agreement; or

15.4.6 If a court of competent jurisdiction finds that the Contractor persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction.

15.5 In such event, the Contractor shall be entitled to compensation for work performed in compliance with the contract specifications up to the date of termination based upon payment terms of this Agreement. Such payment will not exceed the maximum amount provided for by the terms of this Agreement.

15.6 The rights and remedies of the County provided in this clause related to defaults (including breach of contract) by the Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

15.7 If said Agreement is terminated in whole or in part for default, the County may procure, upon such terms and in such manner, as the County may deem appropriate, an Agreement similar to that so terminated. The Contractor shall be liable to the County for any excess costs for such similar procurement and shall continue the performance of said Agreement to the extent not terminated under the provisions of this clause.

16. Force Majeure

16.1 Neither party shall be held responsible for delay or failure to perform caused by fire, flood, epidemic, pandemic, strikes, riot, acts of God, unusually severe weather, terrorism, war, acts of public authorities other than Olmsted County or delays or defaults caused by public carriers which was beyond a party's reasonable control, provided the defaulting party gives notice as soon as possible to the other party of the inability to perform.

17. General Considerations

17.1 Contractor will perform the Project in a timely manner, but it is hereby agreed that Contractor cannot be held responsible for delays occasioned by factors which are beyond its control, or by factors which could not reasonable have been foreseen at the time this Agreement was prepared and executed. Where applicable, Contractor guarantees all workmanship and materials of the items and services furnished for a period of one (1) year after final acceptance of installation. If during the guarantee period any defects or faulty materials are found, Contractor will immediately, upon notification, replace or repair the same at its own expense, along with any damages to finished, fixtures, equipment and furnishings damaged as a result of the defective materials or workmanship.

18. Retainage

18.1 Per MN State Statute 15.72, Subd. 2, the Owner may reserve as retainage from any progress payment due to the Contractor, an amount not to exceed five percent of the payment.

19. Payments to Sub-Contractors

19.1 Per MN State Statute 471.425 Subd. 4a., the Contractor shall make payment to any sub-contractor within ten (10) days of the Contractor's receipt of payment from the Owner for undisputed services provided by the sub-contractors. The Contractor shall pay interest of 1-1/2 percent per month or any part of a month to the sub-contractor on any undisputed amount not paid on time to the sub-contractor.

20. Compliance with Tax Law Requirements

20.1 The County cannot make final payment to the Contractor until the Contractor demonstrates that it and all of its sub-contractors have complied with the Income Tax withholding requirements of MN Statute 290.92 for wages paid for work performed under the contract. To establish compliance, the Contractor must submit a "Contractor Affidavit" either online or in paper form (IC134) to the Minnesota Department of Revenue. The Contractor shall receive written certification of compliance when the Department of Revenue determines that all withholding tax returns have been filed and all withholding taxes attributable to the work performed on the contract have been paid. The Contractor must then provide this written certification to the County to receive final payment. Complying with this requirement is considered part of the Work under this Contract. Contractor delay in complying with this requirement may cause the County to delay final payment and Contract Acceptance.

21. Special Instructions, Non-Minnesota Contractors

21.1 MN Statute 290.9705 requires public entities to deduct and withhold eight (8) percent of payments made to the Contractor if the value of the contract exceeds $50,000.

21.2 Exemptions from this requirement are allowed under specific circumstances that are listed in the "Reason for Exemption" section of the Exemption from Surety Deposits for Non-Minnesota Contractors (SDE) form.

21.3 To apply for an exemption of the eight (8) percent withholding, the Contractor shall follow the instructions and file Form SDE with the Minnesota Department of Revenue.

22. Tariff Adjustments

22.1 Tariff Impact and Notification Requirement

22.1.1 The Contractor acknowledges that any tariffs, duties, taxes, or similar charges imposed on materials, equipment, or services required for the performance of this contract are subject to the conditions set forth herein. In the event that such tariffs or related charges increase during the term of this contract, the Contractor shall bear the full cost of such increases, unless otherwise agreed upon in writing by the County.

22.2 Cost Increase Limitation

22.2.1 The County shall not be responsible for any cost increase resulting from tariffs, duties, or taxes that were not in effect at the time of bid or proposal submission. The Contractor shall not be entitled to any price adjustments,

cost reimbursements, or other relief due to changes in tariffs after the contract is awarded.

22.3 Contractor's Duty to Mitigate Costs

22.3.1 The Contractor shall take all reasonable steps to mitigate any potential impact of tariffs or other trade-related costs on the price of materials, supplies, and services. This may include, but not limited to the following:

22.3.1.1 Recommending sources for alternative suppliers or materials to the County for consideration.

22.3.1.2 Negotiating pricing adjustments with suppliers.

22.3.1.3 Recommending adjustments to construction or production schedules to the County to minimize delays or disruption due to tariff-related issues. However, no schedule adjustments shall be authorized until approved in writing by the County.

22.4 Documentation and Reporting

22.4.1 In the event of an increase in tariffs that may impact the cost of performance, the Contractor must notify the County in writing within thirty (30) days of becoming aware of such increase. The Contractor shall provide supporting documentation from the relevant authorities, such as governmental notices of tariff imposition, to substantiate any claims for cost adjustments due to tariffs. For finished manufactured products, this may include, but is not limited to, a schedule of components from suppliers, manufacturers, and other supply chain partners, detailing the component country of origin, domestic content percentage, total manufactured costs, manufacturer's cost of each component, and total domestic content cost.

22.5 No Price Adjustments for Specified Tariffs

22.5.1 The Contractor agrees that for any goods, services, or materials that are subject to tariffs specified in this contract, the original contract price shall remain fixed, and no adjustment shall be made unless a tariff increase occurs after the contract's execution date, which was unforeseeable at the time of contract formation. Any adjustment for tariffs shall only be considered if the increase in tariff or surcharge exceeds 5% or would result in payment to the vendor of more than $1,000 beyond the contracted amount.

22.6 Force Majeure and Tariffs

22.6.1 The imposition of new tariffs or increases in existing tariffs shall not be considered a force majeure event under this contract unless the tariff increase is so significant that it causes an unforeseeable, direct, and substantial delay in the performance of the contract. In such cases, the Contractor must request an extension of the performance period, and the County will evaluate the claim in accordance with the terms of the force majeure provisions of this contract.

22.7 Dispute Resolution

22.7.1 In the event of a dispute related to the interpretation or application of this Tariff Adjustment Clause, the matter shall be resolved through the dispute resolution procedures specified in this contract, and the Contractor shall bear the burden of proving that the claimed cost increase is directly attributable to tariff changes that occurred after the contract award.