

## **City of Sweet Home**

1400 24<sup>th</sup> Avenue  
Sweet Home, OR 97386

### **Mahler Water Reclamation Facility (MWRF)**

### **Owner-Provided Electrical Equipment Procurement Task Order**

Task Order Document for the provision of Goods to be provided by  
the City Integrator-of-Record –  
The Automation Group, Inc (TAG)

December 2022



**5 Centerpointe Dr #130,  
Lake Oswego, OR 97035**  
(530) 756-5905  
FAX (530) 756-5991

## **MWRF Owner-Provided Electrical Equipment Procurement Task Order Table of Contents**

P520	Agreement Between Buyer and Seller for Procurement Task Order
P610	Performance Bond for Procurement Task Order
P615	Payment Bond for Procurement Task Order
P625	Buyer's Acknowledgment of Receipt of Goods
P700	General Conditions of the Procurement Task Order
	Sample AIS Certification Forms
Exhibit A	The Automation Group (TAG) Proposal

# P520 – AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT TASK ORDER

## TABLE OF CONTENTS

	Page
Article 1— Procurement Task Order.....	1
1.01 <i>Goods and Special Services</i> .....	1
1.02 <i>The Project</i> .....	1
1.03 <i>Engineer</i> .....	1
1.04 <i>Point of Destination</i> .....	1
Article 2— Procurement Task Order Times .....	1
2.01 <i>Time of the Essence</i> .....	1
2.02 <i>Schedule of Procurement Task Order Times</i> .....	1
2.03 <i>Shop Drawings and Samples</i> .....	2
2.04 <i>Liquidated Damages</i> .....	2
Article 3— Procurement Task Order Price.....	2
3.01 <i>Procurement Task Order Price and Total Price</i> .....	2
3.02 <i>Procurement Task Order Price and Total Price—Based on Attached Bid</i> .....	3
Article 4— Payment Procedures .....	3
4.01 <i>Submittal and Processing of Applications for Payment</i> .....	3
4.02 <i>Progress Payments; Final Payment</i> .....	3
4.03 <i>Interest</i> .....	3
Article 5— RESERVED .....	4
Article 6— Procurement Task Order Documents .....	4
6.01 <i>List of Procurement Task Order Documents</i> .....	4
Article 7— Seller’s Representations and Certifications .....	4
7.01 <i>Seller’s Representations</i> .....	4
7.02 <i>Seller’s Certifications</i> .....	5
Article 8— Reserved.....	5
Article 9— Mutual Waiver .....	5
9.01 <i>Mutual Waiver of Consequential Damages</i> .....	5

## P520 – AGREEMENT BETWEEN BUYER AND SELLER FOR PROCUREMENT TASK ORDER

This Procurement Agreement is by and between **the City of Sweet Home** ("Buyer") and **The Automation Group, Inc.** ("Seller") for the Mahler Water Reclamation Facility (MWRF) Owner-Provided Electrical Equipment Procurement.

Terms used in this Procurement Agreement have the meanings stated in the General Conditions of the Procurement Task Order and the Supplementary Conditions of the Procurement Task Order.

Buyer and Seller hereby agree as follows:

### ARTICLE 1—PROCUREMENT TASK ORDER

#### 1.01 *Goods and Special Services*

- A. Seller shall furnish the Goods and Special Services as specified or indicated in the Procurement Task Order Documents. The Goods and Special Services are generally described as follows:
  - 1. **Goods:** Provision of electrical equipment including:
    - a. MWRF Main Switchgear
    - b. MWRF Standby Generator

#### 1.02 *The Project*

- A. The Project, of which the Goods and Special Services are a part, is generally described as follows: **Mahler Water Reclamation Facility Interim Improvements Project (Project).**

#### 1.03 *Engineer*

- A. Buyer has retained **West Yost Associates, Inc.** ("Engineer"), to prepare Procurement Task Order Documents and act as Buyer's representative. Engineer assumes all duties and responsibilities and has the rights and authority assigned to Engineer in the Procurement Task Order Documents in connection with Seller's furnishing of Goods and Special Services.

#### 1.04 *Point of Destination*

The Point of Destination is designated as: **Mahler Water Reclamation Facility, 1357 Pleasant Valley Road, Sweet Home, OR 97386.**

### ARTICLE 2—PROCUREMENT TASK ORDER TIMES

#### 2.01 *Time of the Essence*

- A. All time limits for Milestones, including the submittal of Shop Drawings and Samples, the delivery of Goods, and the furnishing of Special Services as stated in the Procurement Task Order Documents, are of the essence of the Procurement Task Order.

#### 2.02 *Schedule of Procurement Task Order Times*

- A. The following schedule sets forth the Procurement Task Order Times:

Milestone	Date or Days	Notes
MWRF Main Switchgear	441	Delivery timeframe offered by Seller following Submittal and Shop Drawing favorable review.
MWRF Standby Generator	595	Delivery timeframe offered by Seller following Submittal and Shop Drawing favorable review.

#### 2.03 *Shop Drawings and Samples*

- A. *Submittal of Shop Drawings and Samples:* Seller shall base procurement of electrical equipment on MWRF Phase 1 final Task Order documents dated August 2022.
- B. *Engineer's Review:* It is the intent of the parties that provision of Goods and Special Services under this Procurement Task Order will be based on the MWRF Phase 1 100% Design Documents issued by the Engineer. It is acknowledged that the MWRF Phase 1 design solicitation was canceled to rescope the phasing of the Project, that the Phase 1 design will be ongoing, and that some Shop Drawings and Submittals may be required related thereto. Parties agree that an Owner-Controlled Contingency of \$33,210.29 included in the Budget will be used to address equipment modifications related to the MWRF Phase 1 design.

#### 2.04 *Liquidated Damages*

- A. Buyer and Seller recognize that time is of the essence as stated in Paragraph 2.01, and that Buyer will suffer financial and other losses if the Goods are not delivered to the Point of Destination and ready for receipt of delivery by Buyer within the time specified in Paragraph 2.02, plus any extensions thereof allowed in accordance with this Procurement Task Order. The parties also recognize that the timely performance of services by others involved in the Project is materially dependent upon Seller's specific compliance with the delivery requirements of Paragraph 2.02. Further, the parties recognize the time, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the loss (whether direct, consequential, or otherwise) suffered by Buyer if complete, acceptable Goods are not delivered on time. Accordingly, instead of requiring any such proof, Buyer and Seller agree that as liquidated damages for delay (but not as a penalty) Seller shall pay Buyer \$200 for each Day that expires after the time specified in Paragraph 2.02 for Delivery of Goods to the Point of Destination following approval of Submittals and Shop Drawings.

### ARTICLE 3—PROCUREMENT TASK ORDER PRICE

#### 3.01 *Procurement Task Order Price and Total Price*

- A. The Procurement Task Order Price is comprised of the Lump Sum and Unit Price amounts set forth in the following paragraphs.
- B. Buyer shall pay Seller a Lump Sum of **\$889,371.57 (eight hundred eighty-nine thousand, three-hundred seventy-one dollars and fifty-seven cents)** for furnishing the Goods and Special Services (other than any Unit Price Goods and Special Services) in accordance with the Procurement Task Order Documents.
- C. The Procurement Task Order Price is comprised of a combination of Goods as follows:

1. Goods shall include the MWRf Main Switchgear and MWRf Standby Generator. The Task Order Amount allocated for Goods is \$830,257.25.
2. Performance and Payment Bonds. The Task Order Amount allocated for Bonds is \$25,904.03.
3. Owner-Controlled Contingency. The Task Order Amount allocated for Contingency is \$33,210.29.

3.02 *Procurement Task Order Price and Total Price—Based on Attached Bid*

- A. For furnishing the Goods and Special Services in accordance with the Procurement Task Order Documents, Buyer shall pay Seller the prices stated in Seller's Bid, subject to final adjustments for Unit Price Goods and Special Services and Buyer's Contingency Allowance, if any, and subject to the following Buyer-accepted alternates: **No alternates.**

**ARTICLE 4—PAYMENT PROCEDURES**

4.01 *Submittal and Processing of Applications for Payment*

- A. Seller shall submit Applications for Payment in accordance with Article 13 of the General Conditions and the following paragraphs. Engineer and Buyer will process such Applications for Payment in accordance with said Article 13.

4.02 *Progress Payments; Final Payment*

- A. **Payment Schedule 1 for Goods:** Seller may submit an Application for Payment requesting the stated percentage of Procurement Task Order Price for Main Switchboard and Standby Generator based upon the following Payment Line Items:

Payment Line Item (Lump Sum)	Percentage of Lump Sum
1. Advance for purchase of Goods provided with proof of purchase	60
2. Freight on Board (FOB) delivery of Goods to Point of Destination along with provision of final Operations and Maintenance manuals, submittal of warranties and other final documentation required by the Procurement Task Order Documents.	40
<b>Total Procurement Task Order Price for Goods (Lump Sum)</b>	<b>100</b>

- B. Buyer shall pay Seller the amount owed under an Application for Payment within 30 days after Engineer's presentation to Buyer of the Application for Payment and Engineer's recommendation.

4.03 *Interest*

- A. All amounts not paid when due will bear interest as the rate of 6 percent per annum.

## ARTICLE 5—RESERVED

## ARTICLE 6—PROCUREMENT TASK ORDER DOCUMENTS

### 6.01 *List of Procurement Task Order Documents*

- A. The Procurement Task Order Documents consist of the following:
  - 1. This Procurement Agreement.
  - 2. General Conditions of the Procurement Task Order.
  - 3. Bonds:
    - a. Performance bond (together with power of attorney).
    - b. Payment bond (together with power of attorney).
  - 4. Exhibits to this Procurement Agreement (enumerated as follows):
    - a. Attachment A, The Automation Group Phase 1 Owner Provided Equipment Letter Proposal
  - 5. The following which may be delivered or issued on or after the Effective Date of the Procurement Task Order and are not attached hereto:
    - a. Change Orders;
    - b. Change Directives; and
    - c. Field Orders.
- B. The documents listed in Paragraph 6.01.A are attached to this Procurement Agreement (except as expressly noted otherwise above).
- C. There are no Procurement Task Order Documents other than those listed above.
- D. The Procurement Task Order Documents may only be amended or supplemented as provided in Paragraph 11.01 of the Procurement General Conditions.

## ARTICLE 7—SELLER’S REPRESENTATIONS AND CERTIFICATIONS

### 7.01 *Seller’s Representations*

- A. In order to induce Buyer to enter into this Procurement Agreement, Seller makes the following representations:
  - 1. Seller has examined and carefully studied the Procurement Task Order Documents.
  - 2. If required by the Instructions to Bidders to visit the Point of Destination and the site where the Goods are to be installed or Special Services will be provided, or if, in Seller’s judgment, any observable local or site conditions may affect the delivery, cost, progress, or furnishing of the Goods and Special Services, then Seller has visited the Point of Destination and site where the Goods are to be installed or Special Services will be provided (as applicable) and become familiar with and is satisfied as to the observable local and site conditions that may affect delivery, cost, progress, and furnishing of the Goods and Special Services.

3. Seller is familiar with and is satisfied as to all Laws and Regulations that may affect the cost, progress, and performance of Seller's obligations under the Procurement Task Order.
4. Seller has carefully studied, considered, and correlated the information known to Seller with respect to the effect of such information on the cost, progress, and performance of Seller's obligations under the Procurement Task Order.
5. Seller has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Seller has discovered in the Procurement Task Order Documents, and the written resolution (if any) thereof by Engineer is acceptable to Seller.
6. The Procurement Task Order Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of Seller's obligations under the Procurement Task Order.
7. Seller's entry into this Procurement Task Order constitutes an incontrovertible representation by Seller that without exception all prices in the Procurement Agreement are premised upon furnishing the Goods and Special Services as required by the Procurement Task Order Documents.

#### 7.02 *Seller's Certifications*

- A. Seller certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Procurement Task Order. For the purposes of this Paragraph 7.02:
  1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Procurement Task Order execution;
  2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Procurement Task Order to the detriment of Buyer, (b) to establish bid or Task Order prices at artificial non-competitive levels, or (c) to deprive Buyer of the benefits of free and open competition;
  3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Buyer, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
  4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Procurement Task Order.

### **ARTICLE 8—RESERVED**

### **ARTICLE 9—MUTUAL WAIVER**

#### 9.01 *Mutual Waiver of Consequential Damages*

- A. Buyer and Seller waive against each other, and against the other's officers, directors, members, partners, employees, agents, consultants, and subcontractors, any and all claims for or entitlement to incidental, indirect, or consequential damages arising out of, resulting from, or related to the Procurement Task Order. If Buyer (Project Owner) assigns this



Procurement Task Order to a construction contractor (Contractor/Assignee), then the terms of this Paragraph 9.01.A will be binding upon the Contractor/Assignee with respect to Seller and assignor. The terms of this mutual waiver do not apply to or limit any claim by either Buyer or Seller against the other based on any of the following: (a) contribution or indemnification, (b) liquidated damages, (c) costs, losses, or damages attributable to personal or bodily injury, sickness, disease, or death, or to injury to or destruction of the tangible property of others, (d) intentional or reckless wrongful conduct, or (e) rights conferred by any bond provided by Seller under this Procurement Task Order.

IN WITNESS WHEREOF, Buyer and Seller have signed this Procurement Agreement. Counterparts have been delivered to Buyer and Seller.

The Effective Date of the Procurement Task Order is **December 14, 2022**.

Buyer

Seller

\_\_\_\_\_  
(typed or printed name of organization)

By: \_\_\_\_\_  
(individual's signature)

Date: \_\_\_\_\_  
(date signed)

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Attest: \_\_\_\_\_  
(individual's signature)

Title: \_\_\_\_\_  
(typed or printed)

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

(If Buyer is a corporation, attach evidence of authority to sign. If Buyer is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

\_\_\_\_\_  
(typed or printed name of organization)

By: \_\_\_\_\_  
(individual's signature)

Date: \_\_\_\_\_  
(date signed)

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

(If Seller is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: \_\_\_\_\_  
(individual's signature)

Title: \_\_\_\_\_  
(typed or printed)

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_

Designated Representative:

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(typed or printed)

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

## P610 – PERFORMANCE BOND FOR PROCUREMENT TASK ORDER

<b>Seller</b> Name: <b>The Automation Group, Inc.</b> Address <i>(principal place of business)</i> : <b>4678 Isabelle Street</b> <b>Eugene, OR 97402</b>	<b>Surety</b> Name: <b>KPD Insurance</b> Address <i>(principal place of business)</i> : <b>KPD Insurance</b> <b>1111 Gateway Loop, Springfield, OR 97477</b>
<b>Buyer</b> Name: <b>City of Sweet Home</b> Mailing address <i>(principal place of business)</i> : <b>1400 24<sup>th</sup> Ave</b> <b>Sweet Home, OR 97386</b>	<b>Procurement Contract</b> <b>Description</b> <i>(name and location)</i> : furnishing electrical equipment <b>Project</b> : Mahler Water Reclamation Facility Interim Improvements Project <b>Point of Destination</b> : 1357 Pleasant Valley Road, Sweet Home, OR 97386 <b>Procurement Contract Price</b> : \$889,371.57 <b>Effective Date of Procurement</b> : December 14, 2022
<b>Bond</b> Bond Amount: <b>\$889,371.57</b> Date of Bond: <b>December 14, 2022</b> <i>(Date of Bond cannot be earlier than Effective Date of Procurement Contract)</i> Modifications to this Bond form: <input checked="" type="checkbox"/> None <input type="checkbox"/> See Paragraph 15	
Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Performance Bond, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.	
Seller as Principal	Surety
<i>(Full formal name of Seller)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.</i>	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer for the performance of the Procurement Task Order, which is incorporated herein by reference.
2. If the Seller performs the Procurement Task Order, the Surety and the Seller shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.
3. If there is no Buyer Default under the Procurement Task Order, the Surety's obligation under this Bond will arise after:
  - 3.1. The Buyer first provides notice to the Seller and the Surety that the Buyer is considering declaring a Seller Default. Such notice may indicate whether the Buyer is requesting a conference among the Buyer, Seller, and Surety to discuss the Seller's performance. If the Buyer does not request a conference, the Surety may, within five (5) business days after receipt of the Buyer's notice, request such a conference. If the Surety timely requests a conference, the Buyer shall attend. Unless the Buyer agrees otherwise, any conference requested under this Paragraph 3.1 will be held within ten (10) business days of the Surety's receipt of the Buyer's notice. If the Buyer, the Seller, and the Surety agree, the Seller shall be allowed a reasonable time to perform the Procurement Task Order, but such an agreement does not waive the Buyer's right, if any, subsequently to declare a Seller Default;
  - 3.2. The Buyer declares a Seller Default, terminates the Procurement Task Order, and notifies the Surety; and
  - 3.3. The Buyer has agreed to pay the Balance of the Procurement Task Order Price in accordance with the terms of the Procurement Task Order to the Surety or to a seller selected to perform the Procurement Task Order.
4. Failure on the part of the Buyer to comply with the notice requirement in Paragraph 3.1 does not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
5. When the Buyer has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
  - 5.1. Arrange for the Seller, with the consent of the Buyer, to perform and complete the Procurement Task Order;
  - 5.2. Undertake to perform and complete the Procurement Task Order itself, through its agents or independent contractors;
  - 5.3. Obtain bids or negotiated proposals from qualified sellers acceptable to the Buyer for a Task Order for performance and completion of the Procurement Task Order, arrange for a Task Order to be prepared for execution by the Buyer and a seller selected with the Buyer's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Procurement Task Order, and pay to the Buyer the amount of damages as described in Paragraph 7 in excess of the Balance of the Procurement Task Order Price incurred by the Buyer as a result of the Seller Default; or
  - 5.4. Waive its right to perform and complete, arrange for completion, or obtain a new seller, and with reasonable promptness under the circumstances:
    - 5.4.1. After investigation, determine the amount for which Surety may be liable to the Buyer and, as soon as practicable after the amount is determined, make payment to the Buyer; or

5.4.2. Deny liability in whole or in part and notify the Buyer, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven (7) days after receipt of an additional written notice from the Buyer to the Surety demanding that the Surety perform its obligations under this Bond, and the Buyer shall be entitled to enforce any remedy available to the Buyer. If the Surety proceeds as provided in Paragraph 5.4, and the Buyer refuses the payment, or the Surety has denied liability, in whole or in part, without further notice, the Buyer shall be entitled to enforce any remedy available to the Buyer.
7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Buyer will not be greater than those of the Seller under the Procurement Task Order, and the responsibilities of the Buyer to the Surety will not be greater than those of the Buyer under the Procurement Task Order. Subject to the commitment by the Buyer to pay the Balance of the Procurement Task Order Price, the Surety is obligated, without duplication for:
  - 7.1. the responsibilities of the Seller for correction of defective or non-conforming Goods and Special Services, and completion of the Procurement Task Order;
  - 7.2. additional legal, design professional, and delay costs resulting from the Seller's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and
  - 7.3. liquidated damages, or if no liquidated damages are specified in the Procurement Task Order, actual damages caused by delayed performance or non-performance of the Seller.
8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.
9. The Surety shall not be liable to the Buyer or others for obligations of the Seller that are unrelated to the Procurement Task Order, and the Balance of the Procurement Task Order Price will not be reduced or set off on account of any such unrelated obligations. No right of action will accrue on this Bond to any person or entity other than the Buyer or its heirs, executors, administrators, successors, and assigns.
10. The Surety hereby waives notice of any change, including changes of time, to the Procurement Task Order or to related subcontracts, purchase orders, and other obligations.
11. Any proceeding, legal or equitable, under this Bond must be instituted in any court of competent jurisdiction where the Point of Destination is located and must be instituted within two years after a declaration of Seller Default, or within two years after the Seller ceased working, or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit will be applicable.
12. Notice to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Point of Destination, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted here from and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.

## P615 – PAYMENT BOND FOR PROCUREMENT TASK ORDER

<b>Seller</b> Name: <b>The Automation Group, Inc.</b> Address <i>(principal place of business)</i> : <b>4678 Isabelle Street</b> <b>Eugene, OR 97402</b>	<b>Surety</b> Name: <b>KPD Insurance</b> Address <i>(principal place of business)</i> : <b>KPD Insurance</b> <b>1111 Gateway Loop, Springfield, OR 97477</b>
<b>Buyer</b> Name: <b>City of Sweet Home</b> Mailing address <i>(principal place of business)</i> : <b>1400 24<sup>th</sup> Ave</b> <b>Sweet Home, OR 97386</b>	<b>Procurement Task Order</b> <b>Description <i>(name and location)</i>:</b> furnishing electrical equipment <b>Project:</b> Mahler Water Reclamation Facility Interim Improvements Project <b>Point of Destination:</b> 1357 Pleasant Valley Road, Sweet Home, OR 97386 <b>Procurement Task Order Price:</b> \$889,371.57 <b>Effective Date of Procurement</b> December 14, 2022
<b>Bond</b> Bond Amount: <b>\$889,371.57</b> Date of Bond: <b>December 14, 2022</b> <i>(Date of Bond cannot be earlier than Effective Date of Procurement Task Order)</i> Modifications to this Bond form: <input type="checkbox"/> None <input type="checkbox"/> See Paragraph 17	
Surety and Seller, intending to be legally bound hereby, subject to the terms set forth in this Payment Bond, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.	
Seller as Principal	Surety
<i>(Full formal name of Seller)</i>	<i>(Full formal name of Surety) (corporate seal)</i>
By: _____ <div style="text-align: center;"><i>(Signature)</i></div>	By: _____ <div style="text-align: center;"><i>(Signature)(Attach Power of Attorney)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>	Attest: _____ <div style="text-align: center;"><i>(Signature)</i></div>
Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>	Name: _____ <div style="text-align: center;"><i>(Printed or typed)</i></div>
Title: _____	Title: _____
<i>Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Seller, Surety, Buyer, or other party is considered plural where applicable.</i>	

1. The Seller and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Buyer to pay for labor, materials, and equipment furnished for use in the performance of the Procurement Task Order, which is incorporated herein by reference, subject to the following terms.
2. If the Seller promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Buyer from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Procurement Task Order, then the Surety and the Seller shall have no obligation under this Bond.
3. If there is no Buyer Default under the Procurement Task Order, the Surety's obligation to the Buyer under this Bond will arise after the Buyer has promptly notified the Seller and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Buyer or the Buyer's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Procurement Task Order, and tendered defense of such claims, demands, liens, or suits to the Seller and the Surety.
4. When the Buyer has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Buyer against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond will arise after the following:
  - 5.1. Claimants who do not have a direct Task Order with the Seller
    - 5.1.1. have furnished a written notice of non-payment to the Seller, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2. have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2. Claimants who are employed by or have a direct Task Order with the Seller have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Buyer to the Seller, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1. Send an answer to the Claimant, with a copy to the Buyer, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2. Pay or arrange for payment of any undisputed amounts.
  - 7.3. The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 will not be deemed to constitute a waiver of defenses the Surety or Seller may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

8. The Surety's total obligation will not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond will be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Buyer to the Seller under the Procurement Task Order will be used for the performance of the Procurement Task Order and to satisfy claims, if any, under any procurement performance bond. By the Seller furnishing and the Buyer accepting this Bond, they agree that all funds earned by the Seller in the performance of the Procurement Task Order are dedicated to satisfying obligations of the Seller and Surety under this Bond, subject to the Buyer's priority to use the funds for the completion of the Goods and Special Services.
10. The Surety shall not be liable to the Buyer, Claimants, or others for obligations of the Seller that are unrelated to the Procurement Task Order. The Buyer shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Procurement Task Order or to related subcontracts, purchase orders, and other obligations.
12. No suit or action will be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the Point of Destination is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Procurement Task Order, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit will be applicable.
13. Notice and Claims to the Surety, the Buyer, or the Seller must be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, will be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement where the Point of Destination is located, any provision in this Bond conflicting with said statutory or legal requirement will be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement will be deemed incorporated herein. When so furnished, the intent is that this Bond will be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Seller and Buyer shall promptly furnish a copy of this Bond or shall permit a copy to be made.

16. Definitions

16.1. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Procurement Task Order or to perform and complete or comply with the other material terms of the Procurement Task Order.

16.2. *Claim*—A written statement by the Claimant including at a minimum:

16.2.1. The name of the Claimant;

16.2.2. The name of the person for whom the labor was done, or materials or equipment furnished;

16.2.3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Procurement Task Order;



- 16.2.4. A brief description of the labor, materials, or equipment furnished;
  - 16.2.5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Procurement Task Order;
  - 16.2.6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
  - 16.2.7. The total amount of previous payments received by the Claimant; and
  - 16.2.8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.
- 16.3. *Claimant*—An individual or entity having a direct Task Order with the Seller or with a subcontractor of the Seller to furnish labor, materials, or equipment for use in the performance of the Procurement Task Order. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic’s lien or similar statute against the real property upon which the Point of Destination is located or where the Goods and Special Services are to be installed or furnished. The intent of this Bond is to include without limitation in the terms of “labor, materials, or equipment” that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Procurement, architectural and engineering services required for performance of the work of the Seller and the Seller’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 16.4. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, as defined in the Procurement Task Order.
- 16.5. *Point of Destination*—The location where delivery of the Goods shall be made, as stated in the Procurement Task Order.
- 16.6. *Procurement Task Order*—The contractual agreement between the Buyer and Seller identified on the cover page, including all Procurement Task Order Documents and all changes made to the Procurement Task Order.
- 16.7. *Procurement Task Order Documents*—All the documents that comprise the contractual agreement between the Buyer and Seller.
17. Modifications to this Bond are as follows: **None**

## P625 – BUYER’S ACKNOWLEDGMENT OF RECEIPT OF GOODS

Buyer: City of Sweet Home  
Engineer: West Yost Associates  
Seller: The Automation Group, Inc.  
Project: Mahler Water Reclamation Facility Interim Improvements Project  
Contract Name: Mahler WRF Owner-Provided Electrical Equipment Procurement

Buyer’s Project No.:  
Engineer’s Project No.: 936-50-21-09  
Seller’s Project No.:

This Buyer’s Acknowledgment of Receipt of Goods (Acknowledgment) applies to:

☐ All Goods      ☐ The following specified portions of the Goods: **[Specify]**

Date of delivery of the Goods to the Point of Destination: **[Date]**

Date of Buyer’s visual inspection of the Goods: **[Date]**

Date of this Acknowledgment: **[Date]**

Buyer acknowledges:

1. The Goods to which this notice applies have been delivered to the Point of Destination.
2. Buyer has visually inspected such Goods pursuant to Paragraph 9.02.B.1 of the General Conditions of the Procurement Contract.
3. Based on the visual inspection, such Goods appear to comply with the requirements of the Procurement Contract Documents as to quantities and condition, subject to any exceptions and limitations in this Acknowledgment.
4. Such Goods are deemed received for purposes of Paragraph 9.02.B.2 of the General Conditions of the Procurement Contract.
5. Seller may submit its Application for Payment for the delivered Goods, subject to the terms of the Procurement Agreement.

Exceptions (if any) to this Acknowledgment: ☐ None      ☐ As follows:

The responsibilities between Buyer and Seller for securing and storing the Goods, maintaining the Goods during storage, and for furnishing the Special Services, shall be as provided in the Procurement Contract.

The following documents are attached to and made a part of this Acknowledgement:

**[List, if any, or indicate None]**

This Acknowledgment does not constitute an acceptance of any Goods not in conformance with the Procurement Contract Documents, nor is it a release of Seller's obligation to furnish all Goods and Special Services in accordance with the Procurement Contract.

**Buyer**

By (signature): \_\_\_\_\_

Name (Printed): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*(THIS PAGE LEFT BLANK INTENTIONALLY)*

# **P700 – STANDARD GENERAL CONDITIONS OF THE PROCUREMENT TASK ORDER**

## **TABLE OF CONTENTS**

	<b>Page</b>
Article 1— Definitions and Terminology.....	1
1.01 Defined Terms.....	1
1.02 Terminology .....	4
1.03 Defined Terms Related to American Iron and Steel .....	5
Article 2— Preliminary Matters .....	8
2.01 Delivery of Bonds and Evidence of Insurance.....	8
2.02 Copies of Documents .....	8
2.03 Electronic Transmittals .....	9
2.04 Preliminary Schedules.....	9
2.05 Preliminary Conference .....	9
2.06 Safety .....	9
Article 3— Procurement Task Order Documents .....	10
3.01 Intent.....	10
3.02 Reference Standards.....	10
3.03 Reporting and Resolving Discrepancies .....	11
3.04 Requirements of the Procurement Drawings and Procurement Specifications.....	11
3.05 Reuse of Documents .....	12
3.06 American Iron and Steel (AIS) Requirements .....	12
Article 4— Commencement and Schedule .....	13
4.01 Commencement of Procurement Task Order Times .....	13
4.02 Continuing Performance .....	13
4.03 Adjustments to Progress Schedule .....	13
4.04 Delays.....	13
Article 5— Bonds and Insurance.....	16
5.01 Performance, Payment, and Other Bonds.....	16
5.02 Insurance—General Provisions.....	17
6.03 Seller’s Insurance .....	18

6.04	Builder’s Risk and Other Property Insurance .....	22
6.05	Property Losses; Subrogation .....	24
6.06	Receipt and Application of Property Insurance Proceeds .....	25
Article 6— Licenses and Fees.....		25
6.01	Intellectual Property and License Fees .....	25
6.02	Seller’s Infringement.....	25
6.03	Buyer’s Infringement .....	26
Article 7— Seller’s Responsibilities.....		27
7.01	Performance of Obligations .....	27
7.02	Labor, Materials and Equipment .....	27
7.03	Laws and Regulations.....	27
7.04	“Or Equals” .....	28
7.05	Taxes .....	29
7.06	Submittals .....	29
7.07	Indemnification .....	32
7.08	Concerning Subcontractors and Suppliers.....	32
Article 8— Shipping and Delivery .....		32
8.01	Shipping.....	32
8.02	Delivery .....	33
8.03	Risk of Loss .....	33
Article 9— Buyer’s Rights.....		33
9.01	Seller’s Warranties and Guarantees .....	33
9.02	Inspections and Testing .....	34
9.03	Non-Conforming Goods and Special Services.....	35
9.04	Correction Period.....	37
Article 10— Engineer’s Status.....		37
10.01	Engineer’s Role Defined .....	37
10.02	Duties and Responsibilities; Authority; Limitations.....	37
Article 11— Changes.....		38
11.01	Amending and Supplementing the Procurement Task Order.....	38
11.02	Change Orders .....	38
11.03	Change Directives .....	38
11.04	Field Orders.....	39

11.05	Buyer-Authorized Changes in the Goods and Special Services.....	39
11.06	Buyer’s Contingency Allowance.....	39
11.07	Unauthorized Changes in the Goods and Special Services .....	40
11.08	Change of Procurement Task Order Price.....	40
11.09	Change of Procurement Task Order Times .....	40
11.10	Notification to Surety.....	40
Article 12— Claims, Disputes, and Dispute Resolution .....		40
12.01	Claims.....	40
12.02	Dispute Resolution Method .....	41
Article 13— Payment .....		42
13.01	Applications for Progress Payments .....	42
13.02	Review of Applications for Progress Payments .....	42
13.03	Basis and Amount of Progress Payments.....	44
13.04	Suspension of or Reduction in Payment.....	44
13.05	Final Payment.....	45
13.06	Waiver of Claims .....	46
Article 14— Cancellation, Suspension, and Termination .....		46
14.01	Cancellation .....	46
14.02	Suspension of Performance by Buyer .....	46
14.03	Suspension of Performance by Seller .....	46
14.04	Breach and Termination .....	46
Article 15— Miscellaneous .....		47
15.01	Giving Notice.....	47
15.02	Controlling Law .....	47
15.03	Computation of Time .....	47
15.04	Cumulative Remedies .....	48
15.05	Survival of Obligations .....	48
15.06	Entire Agreement.....	48
15.07	No Waiver .....	48
15.08	Headings.....	48
15.09	Successors and Assigns .....	48
15.10	Limitation of Damages .....	48
15.11	Assignment of Task Order.....	48
15.12	Severability.....	49

*(THIS PAGE LEFT BLANK INTENTIONALLY)*

## ARTICLE 1—DEFINITIONS AND TERMINOLOGY

### 1.01 *Defined Terms*

- A. Whenever used in the Procurement Bidding Requirements or Procurement Task Order Documents and printed with initial capital letters, the terms listed below will have the meanings indicated, which are applicable to the singular or plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Procurement Task Order Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Procurement Task Order Documents.
  2. *Application for Payment*—The document prepared by Seller, in a form acceptable to Buyer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Procurement Task Order Documents.
  3. *Bid*—An offer or proposal of a prospective Seller submitted on the prescribed form setting forth the prices for the Goods and Special Services to be provided.
  4. *Bidder*—An individual or entity that, as a prospective Seller, submits a Bid to Buyer.
  5. *Buyer*—The individual or entity purchasing the Goods and Special Services, which is the City of Sweet Home.
  6. *Change Directive*—A written directive from Buyer to Seller issued on or after the Effective Date of the Procurement Task Order, ordering an addition, deletion, or revision in the Goods and Special Services.
  7. *Change Order*—A document which is signed by Seller and Buyer and authorizes an addition, deletion, or revision to the Procurement Task Order Documents or an adjustment in the Procurement Task Order Price or the Procurement Task Order Times, issued on or after the Effective Date of the Procurement Task Order. Change Orders may be the result of mutual agreement by Buyer and Seller, or of resolution of a Claim.
  8. *Claim*—A demand or assertion by Buyer or Seller seeking an adjustment of Procurement Task Order Price or Procurement Task Order Times, or both, or other relief with respect to the terms of the Procurement Task Order. A demand for money or services by a third party is not a Claim.
  9. *Days* – shall be defined as a calendar day.
  10. *Effective Date of the Procurement Task Order*—The date indicated in the Procurement Agreement on which the Procurement Task Order becomes effective.
  11. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  12. *Electronic Means*—Electronic mail (e-mail), upload/download from a secure Project website, or other communications methods that allow: the transmission or communication of Electronic Documents; the documentation of transmissions,



including sending and receipt; printing of the transmitted Electronic Document by the recipient; the storage and archiving of the Electronic Document by sender and recipient; and the use by recipient of the Electronic Document for purposes permitted by this Procurement Task Order. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

13. *Engineer*—The individual or entity designated as such in the Procurement Agreement, which is West Yost Associates, Inc.
14. *Field Order*—A written order issued by Engineer which requires minor changes in the Goods or Special Services, but which does not involve a change in the Procurement Task Order Price or Procurement Task Order Times.
15. *Goods*—The tangible and movable personal property that is described in the Procurement Task Order Documents, regardless of whether the property is to be later attached to realty.
16. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, including Goods, as defined herein, and Special Services, if any, as defined herein. This term refers to both the Goods and the Special Services, or to either the Goods or the Special Services, and to any portion of the Goods or the Special Services, as the context requires.
17. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
18. *Milestone*—A principal event specified in the Procurement Task Order that Seller must attain by the date or within the number of days indicated, including but not limited to the delivery of the Goods and the furnishing of Special Services.
19. *Notice of Award (NOA)* —The written notice, by Buyer to a Bidder, of Buyer’s acceptance of the Bid.
20. *Notice to Proceed (NTP)* — The written notice, by Buyer to Seller, directing Seller to begin activities associated the Task Order.
21. *Oregon Business Development Department (OBDD)* –lending agencies providing funding for the Project, otherwise known as the Oregon Infrastructure Finance Authority of the Business Development Department.
22. *Operations Contractor* — the third-party company responsible for operating the facilities, which is Delta Environmental, Inc.
23. *Oregon Health Authority (OHA)* — regulatory agency responsible for public health systems in the State of Oregon.
24. *Oregon Revised Statutes (ORS)* – laws and regulations in the State of Oregon, which shall be the governing rules related to the Project.
25. *Point of Destination*—The specific address of the location where delivery of the Goods will be made, as stated in the Procurement Agreement.
26. *Procurement Agreement*—The written instrument, executed by Buyer and Seller, that sets forth the Procurement Task Order Price and Procurement Task Order Times,

identifies the parties and the Engineer, and designates the specific items that are Procurement Task Order Documents.

27. *Procurement Bidding Documents*—The Procurement Bidding Requirements and the proposed Procurement Task Order Documents (including all Addenda).
28. *Procurement Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and Bid Form with any supplements.
29. *Procurement Task Order*—The entire and integrated written agreement between Buyer and Seller concerning the Goods and Special Services.
30. *Procurement Task Order Documents*—Those items so designated in the Procurement Agreement, and which together comprise the Procurement Task Order. Shop Drawings and other Seller submittals are not Procurement Task Order Documents, even if accepted, reviewed, or approved by Engineer or Buyer.
31. *Procurement Task Order Price*—The money that Buyer has agreed to pay Seller for furnishing the Goods and Special Services in accordance with the Procurement Task Order Documents.
32. *Procurement Task Order Times*—The times stated in the Procurement Agreement by which the Goods must be delivered, Special Services must be furnished, and other Milestones must be attained.
33. *Procurement Drawings*—That part of the Procurement Task Order Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Goods and Special Services to be furnished by Seller. Shop Drawings and other Seller submittals are not Procurement Drawings as so defined.
34. *Procurement Specifications*—That part of the Procurement Task Order Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the furnishing of the Goods and Special Services, and certain administrative requirements and procedural matters applicable thereto.
35. *Project*—The total undertaking to be accomplished for Project Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Goods and Special Services are a part.
36. *Project Owner*—The entity that has retained (or will retain) engineers, contractors, and others for the planning, study, design, construction, testing, commissioning, and start-up of facilities and improvements. As of the Effective Date of the Procurement Contract, the Project Owner is the Buyer.
37. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Goods and Special Services and which establish the standards by which such portion of the Goods and Special Services will be judged.
38. *Schedule of Submittals*—A schedule, prepared and maintained by Seller, of required Submittals and the time requirements for Engineer's review of the Submittals.
39. *Seller*—The individual or entity furnishing the Goods and Special Services.
40. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Seller and submitted

by Seller to illustrate some portion of the Goods and Special Services. Shop Drawings, whether approved or not, are not Procurement Drawings and are not Procurement Task Order Documents.

41. *Special Services*—Services to be performed by Seller (or its agents or subcontractors) in association with the Goods to be furnished by Seller, as required by the Procurement Task Order Documents.
42. *Submittal*—A written or graphic document, prepared by or for Seller, which the Procurement Task Order Documents require Seller to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or site quality-control testing and inspections; warranties and certifications; suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; record documents; and other such documents required by the Procurement Task Order Documents. Submittals, whether or not approved or accepted by Engineer, are not Procurement Task Order Documents. Change proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
43. *Successful Bidder*—The Bidder whose Bid the Buyer accepts, and to which Buyer makes an award of the Procurement Task Order.
44. *Supplementary Conditions*—The part of the Procurement Task Order that amends or supplements these General Conditions.
45. *TBD*— "to be determined"
46. *Unit Price Goods and Special Services*—Goods and Special Services to be paid for on the basis of unit prices (if any).
47. *United States*— each of the several states, the District of Columbia, and each Federally Recognized Indian Tribe.

## 1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B and 1.02.C are not defined, but have the indicated meanings when used in the Bidding Requirements or Procurement Task Order Documents.
- B. *Intent of Certain Terms or Adjectives*
  1. The Procurement Task Order Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Goods and Special Services. It is intended that such exercise of professional judgment, action, or determination will be commercially reasonable and will be solely to evaluate, in general, the Goods and Special Services for compliance with the requirements of and information in the Procurement Task Order Documents and conformance with the design concept of the completed Project as a functioning whole, as shown or indicated in the Procurement

Task Order Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective will not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing of Goods or Special Services or any duty or authority to undertake responsibility contrary to any other provision of the Procurement Task Order Documents.

2. The word “non-conforming” when modifying the words “Goods and Special Services,” “Goods,” or “Special Services,” refers to Goods and Special Services that are unsatisfactory, faulty, or deficient in that they:
    - a. do not conform to or comply with the requirements of the Procurement Task Order Documents;
    - b. do not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Procurement Task Order Documents; or
    - c. in the case of Special Services, have not been completed.
  3. The word “receipt” when referring to the Goods, means the physical taking and possession by the Buyer under the conditions specified in Paragraph 9.02.B.2.
  4. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
  5. The word “furnish,” when used in connection with the Goods and Special Services means to supply and deliver said Goods to the Point of Destination (or some other specified location) and to perform said Special Services fully, all in accordance with the Procurement Task Order Documents.
- C. *Procurement Task Order Price or Procurement Task Order Times:* References to a change in “Procurement Task Order Price or Procurement Task Order Times” or “Procurement Task Order Times or Procurement Task Order Price” or similar, indicate that such change applies to (1) Procurement Task Order Price, (2) Procurement Task Order Times, or (3) both Procurement Task Order Price and Procurement Task Order Times, as warranted, even if the term “or both” is not expressed.
- D. Unless stated otherwise in the Procurement Task Order Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Procurement Task Order Documents in accordance with such recognized meaning.

### 1.03 *Defined Terms Related to American Iron and Steel*

- A. American Iron and Steel (AIS) - Requirements mandated by Section 746 of Title VII of the Consolidated Appropriations Act of 2017 (Division A - Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2017) and subsequent statutes mandating domestic preference for “iron and steel products,” meaning the following products, if made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and Construction Materials. AIS requirements apply in each of the several states, the District of Columbia, and each federally recognized Tribe, but not the U.S. Territories.
- B. Coating - A covering that is applied to the surface of an object. If a Coating is applied to the external surface of a domestic iron or Steel component, and the application takes place

outside of the United States, said product would be considered a compliant product under the AIS requirements. Any Coating processes that are applied to the external surface of Iron and Steel components that would otherwise be AIS compliant would not disqualify the product from meeting the AIS requirements regardless of where the Coating processes occur, provided that final assembly of the product occurs in the United States. This exemption only applies to Coatings on the external surface of Iron and Steel components. It does not apply to Coatings or linings on internal surfaces of Iron and Steel products, such as the lining of lined pipes. All Manufacturing Processes for lined pipes, including the application of pipe lining, must occur in the United States for the product to be compliant with AIS requirements.

- C. Construction Materials - Those articles, materials, or supplies made primarily of iron and/or steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. Note: Mechanical and electrical components, equipment and systems are not considered Construction Materials. See definitions of Mechanical Equipment and Electrical Equipment.
- D. Seller’s Certification - Documentation submitted by the Seller that all Iron and Steel products installed were Produced in the United States.
- E. De Minimis - Various miscellaneous, incidental low-cost components that are essential for, but incidental to, the construction and are incorporated into the physical structure of the project. Examples of De Minimis components could include small washers, screws, fasteners (such as “off the shelf” nuts and bolts), miscellaneous wire, corner bead, ancillary tube, signage, trash bins, door hardware etc. Costs for such De Minimis components cumulatively may comprise no more than a total of five percent of the total cost of the materials used in and incorporated into a project; the cost of an individual item may not exceed one percent of the total cost of the materials used in and incorporated into a project.
- F. Electrical Equipment - Typically any machine powered by electricity and includes components that are part of the electrical distribution system. AIS does not apply to Electrical Equipment.
- G. Engineer’s Certification - Documentation submitted by the Engineer that Drawings, Specifications, and Bidding Documents comply with AIS.
- H. Iron and Steel products - The following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and Construction Materials. Only items on the above list made primarily of iron or steel, permanently incorporated into the project must be Produced in the United States. For example, trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. iron or steel.
- I. Manufacturer - A Supplier, fabricator, distributor, materialman, or vendor is an entity with which the Buyer, Seller or any subSeller has contracted to furnish materials or equipment to be incorporated in the project by the Buyer, Seller, or a subSeller.
- J. Manufacturer’s Certification - Documentation provided by the Manufacturer stating that the Iron and Steel products to be used in the project are produced in the United States in accordance with American Iron and Steel (AIS) Requirements. If items are purchased via a Supplier, distributor, vendor, etc. from the Manufacturer directly, then the Supplier,

distributor, vendor, etc. will be responsible for obtaining and providing these certifications to the parties purchasing the products.

- K. **Manufacturing Processes** - Processes such as melting, refining, pouring, forming, rolling, drawing, finishing, and fabricating. Further, if a domestic Iron and Steel product is taken out of the United States for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a Coating are similarly not covered. Non-iron or Steel components of an Iron and Steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-Iron and Steel components do not have to be of domestic origin. Raw materials, such as iron ore, limestone, scrap iron, and scrap steel, can come from non-U.S. sources.
- L. **Mechanical Equipment** - Typically equipment which has motorized parts and/or is powered by a motor. AIS does not apply to Mechanical Equipment.
- M. **Minor Components** - Components within an iron and/or Steel product otherwise compliant with the American Iron and Steel requirements; this waiver is typically used by Manufacturers. It differs from the De Minimis definition in that De Minimis pertains to the entire project and the minor component definition pertains to a single product. This waiver allows use of non-domestically produced miscellaneous Minor Components comprising up to five percent of the total material cost of an otherwise domestically produced Iron and Steel product. However, unless a separate waiver for a product has been approved, all other Iron and Steel components in said product must still meet the AIS requirements. This waiver does not exempt the whole product from the AIS requirements only Minor Components within said product and the iron or Steel components of the product must be produced domestically. Valves and hydrants are also subject to the cost ceiling requirements described here. Examples of Minor Components could include items such as pins and springs in valves/hydrants, bands/straps in couplings, and other low-cost items such as small fasteners etc.
- N. **Municipal Castings** - Cast iron or Steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and solid waste infrastructure.
- O. **Primarily Iron or Steel** - A product is made of greater than 50 percent iron or Steel on a materials cost basis. An exception to this definition is reinforced precast concrete (see Definitions). All technical specifications and applicable industry standards (e.g. NIST, NSF, AWWA) must be met. If a product is determined to be less than 50 percent iron and/or steel, the AIS requirements do not apply. For example, the cost of a fire hydrant includes:
  - 1. The cost of materials used for the iron portion of a fire hydrant (e.g. bonnet, body and shoe); and
  - 2. The cost to pour and cast to create those components (e.g. labor and energy).
  - 3. Not included in the cost are:
    - a. The additional material costs for the non-iron or Steel internal workings of the hydrant (e.g. stem, coupling, valve, seals, etc.); and
    - b. The cost to assemble the internal workings into the hydrant body.

- P. Produced in the United States - The production in the United States of the iron or Steel products used in the project requires that all Manufacturing Processes must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives.
- Q. Reinforced Precast Concrete – Reinforced Precast Concrete structures must comply with AIS, regardless of whether or not it consists of at least 50 percent iron or steel. The reinforcing bar and wire must be Produced in the United States and meet the same standards as for any other iron or Steel product. Additionally, the casting of the concrete product must take place in the United States. The cement and other raw materials used in concrete production are not required to be of domestic origin. If the reinforced concrete is cast at the construction site, the reinforcing bar and wire are considered Construction Materials and must be Produced in the United States.
- R. Steel - An alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements. Metallic elements such as chromium, nickel, molybdenum, manganese, and silicon may be added during the melting of Steel for the purpose of enhancing properties such as corrosion resistance, hardness, or strength. The definition of Steel covers carbon steel, alloy steel, stainless steel, tool steel, and other specialty steels.
- S. Structural Steel - Rolled flanged shapes, having at least one dimension of their cross-section three inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees, and zees. Other shapes include but are not limited to, H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

## ARTICLE 2—PRELIMINARY MATTERS

### 2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Seller delivers the executed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer the performance bond and payment bond (if the Procurement Task Order requires Seller to furnish such bonds).
- B. *Evidence of Seller's Insurance:* When Seller delivers the signed counterparts of the Procurement Agreement to Buyer, the Seller also shall deliver to Buyer, with copies to each additional insured (as identified in the Procurement Task Order), the certificates, endorsements, and other evidence of insurance required to be provided by Seller in accordance with Article 5. Evidence of insurance to be obtained at a later date, such as insurance relating to transit or storage of the Goods, will be provided to Buyer at the time of such insurance is obtained.
- C. *Evidence of Buyer's Insurance:* After receipt of the signed counterparts of the Procurement Agreement and all required bonds and insurance documentation, Buyer shall promptly deliver to Seller, with copies to each additional insured (as identified in the Procurement Task Order), certificates and other evidence of insurance (if any) required to be provided by Buyer.

### 2.02 *Copies of Documents*

- A. Buyer shall furnish to Seller three printed copies of the Procurement Task Order (including one fully executed counterpart of the Procurement Agreement), and one copy in electronic

portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

#### 2.03 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Procurement Task Order, the Buyer, Seller, and Engineer may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Procurement Task Order does not establish protocols for Electronic Means, then Buyer, Seller, and Engineer shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

#### 2.04 *Preliminary Schedules*

- A. Within 15 days after the Effective Date of the Procurement Task Order, Seller shall submit to Buyer and Engineer for timely review:
  - 1. a progress schedule of activities, consistent with the Procurement Task Order Times, including at a minimum, Shop Drawing and Sample submittals, tests, and deliveries as required by the Procurement Task Order Documents.
    - a. The progress schedule will be acceptable to Buyer and Engineer if it provides an orderly progression of the Submittals, tests, and deliveries to completion within the specified Milestones of the Procurement Task Order Times.
    - b. Such acceptance will not impose on Buyer or Engineer responsibility for the progress schedule, for sequencing, scheduling, or progress of Seller's performance of its obligations under the Procurement Task Order, nor interfere with or relieve Seller from Seller's full responsibility therefor.
    - c. Such acceptance will not be deemed as an acknowledgment of the reasonableness and attainability of the schedule.
  - 2. a preliminary schedule of Submittals.
- B. No progress payment will be made to Seller until an acceptable progress schedule and acceptable schedule of Submittals are submitted to Buyer and Engineer (and other conditions applicable to progress payments are met).

#### 2.05 *Preliminary Conference*

- A. Within 20 days after the Procurement Task Order Times start to run, a conference attended by Seller, Buyer, Engineer and others as appropriate will be held to establish a working understanding among the parties as to the Goods and Special Services and to discuss the schedules referred to in Paragraph 2.04.A, procedures for handling Shop Drawings and other Submittals, processing Applications for Payment, and maintaining required records.

#### 2.06 *Safety*

- A. Buyer and Seller shall comply with all applicable Laws and Regulations relating to the safety of persons or property, and to the protection of persons or property from damage, injury, or loss.



- B. When Seller's personnel, or the personnel of any subcontractor to Seller, are present at the Point of Destination or any work area or site controlled by Buyer, the Seller shall be responsible for the compliance by such personnel with any applicable requirements of Buyer's safety programs that are made known to Seller.
- C. If Buyer or its representatives visit the Seller's manufacturing or storage facilities, for testing, inspection, or other purposes, Seller shall inform Buyer in advance of any safety preparations, standards, or programs with which Buyer and its representatives must comply.

### **ARTICLE 3—PROCUREMENT TASK ORDER DOCUMENTS**

#### **3.01 *Intent***

- A. The Procurement Task Order Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Procurement Task Order Documents or from prevailing custom or trade usage as being required to produce or furnish the indicated Goods and Special Services will be provided, whether or not specifically called for, at no additional cost to Buyer.
- C. Unless otherwise stated in the Procurement Task Order Documents, if there is a discrepancy between the electronic or digital versions of the Procurement Task Order Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version will govern.
- D. The Procurement Task Order supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Procurement Task Order Documents, as provided in Paragraph 3.04.
- F. Any provision or part of the Procurement Task Order Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Buyer and Seller.

#### **3.02 *Reference Standards***

- A. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws and Regulations, whether such reference be specific or by implication, means the standard, specification, manual, code, or Laws and Regulations in effect at the time of opening of Bids (or on the Effective Date of the Procurement Agreement if there were no Bids), except as may be otherwise specifically stated in the Procurement Task Order Documents.
- B. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a supplier, will be effective to change the duties or responsibilities of Buyer, Seller, or Engineer from those set forth in the part of the Procurement Task Order Documents prepared by or for Engineer. No such provision or instruction will be effective to assign to Buyer or Engineer any duty or authority to supervise or direct the performance of Seller's obligations, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Procurement Task Order Documents prepared by or for Engineer.

### 3.03 *Reporting and Resolving Discrepancies*

#### A. *Reporting Discrepancies*

1. *Seller's Review of Procurement Task Order Documents:* If, before or during the performance of Seller's obligations, Seller discovers any conflict, error, ambiguity, or discrepancy within the Procurement Task Order Documents, or between the Procurement Task Order Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any supplier to Seller, then Seller shall promptly report it to Engineer in writing. Seller shall not proceed with the Goods and Special Services affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer or by an amendment or supplement to the Procurement Task Order Documents issued pursuant to Article 11.
2. Seller shall not be liable to Buyer or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Procurement Task Order Documents unless Seller had actual knowledge thereof.

#### B. *Resolving Discrepancies:* Except as may be otherwise specifically stated in the Procurement Task Order Documents, the provisions of the Procurement Task Order Documents will take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Procurement Task Order Documents and:

1. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Procurement Task Order Documents); or
2. the provisions of any Laws or Regulations applicable to the furnishing of the Goods and Special Services (unless such an interpretation of the provisions of the Procurement Task Order Documents would result in violation of such Law or Regulation).

### 3.04 *Requirements of the Procurement Drawings and Procurement Specifications*

- A. During the performance of Seller's obligations and until final payment, Seller and Buyer shall submit to the Engineer all matters in question concerning the requirements of the Procurement Drawings and Procurement Specifications (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Goods and Special Services, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Procurement Drawings and Procurement Specifications, and judge of the acceptability of the Goods and Special Services thereunder.
- B. Engineer will issue with reasonable promptness a written clarification, interpretation, or decision on the issue submitted, and if necessary, initiate an amendment or supplement to the Procurement Drawings or Procurement Specifications. Engineer's written clarification, interpretation, or decision will be consistent with the overall intent of the Procurement Task Order Documents, and will be final and binding on Seller and Buyer. If either Buyer or Seller believes that a written clarification or interpretation justifies an adjustment in the Procurement Task Order Price or Procurement Task Order Times, either may make a Claim for such adjustment as provided in Article 12.
- C. If a submitted matter in question concerns terms and conditions of the Procurement Task Order Documents that do not involve (1) the performance or acceptability of the Goods and

Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation.

### 3.05 *Reuse of Documents*

- A. Seller and its subcontractors and suppliers shall not:
  - 1. have or acquire any title to or ownership rights in any of the Procurement Drawings, Procurement Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Procurement Drawings, Procurement Specifications, other documents, or copies thereof, on extensions of the Project or any other project, without written consent of Buyer and Engineer and specific written verification or adaptation by Engineer; or
  - 2. have or acquire any title or ownership rights in any other Procurement Task Order Documents, reuse any such Procurement Task Order Documents for any purpose without Buyer's express written consent, or violate any copyrights pertaining to such Procurement Task Order Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Procurement Task Order. Nothing herein precludes Seller from retaining copies of the Procurement Task Order Documents for record purposes.

### 3.06 *American Iron and Steel (AIS) Requirements*

- A. The Seller acknowledges to and for the benefit of the City of Sweet Home ("Buyer") and the State of Oregon (the "State") that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or Drinking Water State Revolving Fund that have statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Seller pursuant to this Agreement. The Seller hereby represents and warrants to and for the benefit of the Buyer and the State that (a) the Seller has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Seller will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Buyer or the State. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Seller shall permit the Buyer or State to recover as damages against the Seller any loss, expense, or cost (including without limitation attorney's fees) incurred by the Buyer or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Buyer). While the Seller has no direct contractual privity with the State, as a lender to the Buyer for the funding of its project, the Buyer and the Seller agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this

paragraph force or effect) shall be amended or waived without the prior written consent of the State.

#### **ARTICLE 4—COMMENCEMENT AND SCHEDULE**

##### **4.01 *Commencement of Procurement Task Order Times***

- A. The Procurement Task Order Times will commence to run on the Effective Date of the Procurement Task Order.

##### **4.02 *Continuing Performance***

- A. Seller shall adhere to the progress schedule established in accordance with Paragraph 2.04.A., as duly adjusted, and the Goods will be delivered and the Special Services furnished within the Procurement Task Order Times.
- B. Seller shall carry on furnishing of the Goods and Special Services and adhere to the progress schedule during all disputes or disagreements with Buyer. No furnishing of Goods and Special Services will be delayed or postponed pending resolution of any disputes or disagreements, except as expressly permitted herein, or as Buyer and Seller may otherwise agree in writing.

##### **4.03 *Adjustments to Progress Schedule***

- A. The progress schedule established in accordance with Paragraph 2.04 may be adjusted from time to time as provided below.
  - 1. Seller shall submit to Buyer for acceptance (to the extent indicated in Paragraph 2.04) proposed adjustments in the progress schedule that will not result in changing the Procurement Task Order Times. Such adjustments will comply with any applicable provisions of the Procurement Specifications.
  - 2. Proposed adjustments in the progress schedule that will change the Procurement Task Order Times must be submitted in accordance with the requirements of Article 11. Adjustments in Procurement Task Order Times may only be made by a Change Order.

##### **4.04 *Delays***

- A. If Buyer, Engineer, or anyone for whom Buyer is responsible, delays, disrupts, or interferes with Seller's performance or progress, then Seller shall be entitled to an equitable adjustment in Procurement Task Order Price or Procurement Task Order Times.
- B. Seller shall not be entitled to an adjustment in Procurement Task Order Price or Procurement Task Order Times for delay, disruption, or interference caused by or within the control of Seller or anyone for whom Seller is responsible.
- C. If Seller's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Buyer, Seller, and those for which they are responsible, then Seller shall be entitled to an equitable adjustment in Procurement Task Order Times. Such an adjustment will be Seller's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Procurement Task Order Times under this paragraph include but are not limited to the following:
  - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;

2. abnormal weather conditions;
3. inspection delays by governmental authorities, and custom delays;
4. international shipping delays;
5. acts or failures to act of third-party entities; and
6. acts of war or terrorism.
7. Weather-Related Delays
  - a. If “abnormal weather conditions” as set forth in Paragraph 4.04.C.2 of the General Conditions are the basis for a request for an equitable adjustment in the Task Order Times, such request must be documented by data substantiating each of the following: 1) that weather conditions were abnormal for the period of time in which the delay occurred, 2) that such weather conditions could not have been reasonably anticipated, and 3) that such weather conditions had an adverse effect on the Work as scheduled.
  - b. The existence of abnormal weather conditions will be determined on a month-by-month basis in accordance with the following:
    - 1) Every workday on which one or more of the following conditions exist will be considered a “bad weather day”:
      - i) Total precipitation (as rain equivalent) occurring between 7:00 p.m. on the preceding day (regardless of whether such preceding day is a workday) through 7:00 p.m. on the workday in question equals or exceeds **1.0** inches of precipitation (as rain equivalent, based on the snow/rain conversion indicated in the table entitled Foreseeable Bad Weather Days; such table is hereby incorporated in this SC-4.05.C by reference.
      - ii) Ambient outdoor air temperature for 60 minutes between the hours of 10:00 a.m. and 3:00 p.m. is equal to or less than the following low temperature threshold: **15** degrees Fahrenheit; or, at 3:00 p.m. the ambient outdoor temperature is equal to or greater than the following high temperature threshold: **100** degrees Fahrenheit.
    - 2) Determination of actual bad weather days during performance of the Work will be based on the weather records measured and recorded by the City of Sweet Home Public Works Department.
    - 3) Seller shall anticipate the number of foreseeable bad weather days per month indicated in the table below — Foreseeable Bad Weather Days.
    - 4) Seller shall include the following Foreseeable Bad Weather Days in the Progress Schedule as follows:
      - i) January – 3 Days
      - ii) February – 2 Days
      - iii) March – 1 Day
      - iv) April – 1 Days
      - v) May – 0 Days

- vi) June – 0 Days
- vii) July – 1 Days
- viii) August – 2 Days
- iv) September – 1 Days
- v) October – 1 Day
- vi) November – 2 Days
- vii) December – 3 Days

- 5) In each month, every bad weather day exceeding the number of Foreseeable Bad Weather Days will be considered as “abnormal weather conditions.” The existence of abnormal weather conditions will not relieve Seller of the obligation to demonstrate and document that delays caused by abnormal weather are specific to the planned work activities or that such activities thus delayed were on Seller’s then-current Progress Schedule’s critical path for the Project.
- 6) If mutually agreed upon by Buyer and Seller, working hours during days with anticipated abnormal weather periods can be adjusted to allow work earlier or later in the day depending on the type of abnormal weather expected.

D. *Adjustments of Procurement Task Order Times or Procurement Task Order Price—General Provisions:* Seller’s entitlement to an adjustment of Procurement Task Order Times or Procurement Task Order Price is limited as follows:

- 1. Seller’s entitlement to an adjustment of the Procurement Task Order Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of Seller’s obligations, as of the time of the delay, disruption, or interference.
- 2. Seller shall not be entitled to an adjustment in Procurement Task Order Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Seller. Such a concurrent delay by Seller does not preclude an adjustment of Procurement Task Order Times to which Seller is otherwise entitled.
- 3. Adjustments of Procurement Task Order Times or Procurement Task Order Price are subject to the provisions of Articles 11 and 12.

E. Each Seller request seeking a delay-related increase in Procurement Task Order Times or Procurement Task Order Price must be supplemented by supporting data that sets forth in detail the following: (1) the circumstances that form the basis for the requested adjustment; (2) the date upon which each cause of delay, disruption, or interference began to affect Seller’s progress; (3) the date upon which each cause of delay, disruption, or interference ceased to affect Seller’s progress; (4) the number of days’ increase in Procurement Task Order Times claimed as a consequence of each such cause of delay, disruption, or interference; and (5) the impact on Procurement Task Order Price. Seller shall also furnish such additional supporting documentation as Buyer or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion.

## ARTICLE 5—BONDS AND INSURANCE

### 5.01 *Performance, Payment, and Other Bonds*

- A. Seller shall furnish a performance bond and a payment bond, each in an amount at least equal to the Procurement Task Order Price, as security for the faithful performance and payment of Seller's obligations under the Procurement Task Order. These bonds must remain in effect until three years after the date when final payment becomes due or until completion of the correction period specified in Paragraph 9.04, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Procurement Task Order.
  - 1. *Required Performance Bond Form:* The performance bond that Seller furnishes will be in the form of EJCDC® P-610, Performance Bond (2010 or 2019 edition).
  - 2. *Required Payment Bond Form:* The payment bond that Seller furnishes will be in the form of EJCDC® P-615, Payment Bond (2010 or 2019 edition).
- B. Seller shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Procurement Task Order.
- C. All bonds must be in the form specified by Buyer prior to execution of the Procurement Task Order, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.
- D. Seller shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Seller is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Seller shall promptly notify Buyer and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements of this Procurement Task Order.
- F. If Seller has failed to obtain a required bond, Buyer may exercise Buyer's termination rights under Article 14.
- G. Upon request to Buyer from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Buyer shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Seller from any subcontractor, supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of Seller's obligations, Seller shall provide a copy of the payment bond to such person or entity.

5.02 *Insurance—General Provisions*

- A. Buyer and Seller shall obtain and maintain insurance as required in this procurement Task Order and City of Sweet Home Special Provisions.
- B. Seller's insurance required by the Task Order shall be primary over Buyer's insurance and shall include a waiver of subrogation against Buyer and Engineer.
- C. All insurance required by the Task Order to be purchased and maintained by Buyer or Seller shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Project is located to issue insurance policies for the required limits and coverages. All companies that provide insurance policies required under this Task Order shall have an A.M. Best rating of A-VII or better.
- D. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Task Order.
- E. Seller shall deliver to Buyer, with copies to each additional insured identified in the Task Order, certificates of insurance and endorsements establishing that Seller has obtained and is maintaining the policies and coverages required by the Task Order. Upon request by Buyer or any other insured, Seller shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Seller, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Task Order.
- F. Buyer shall deliver to Seller, with copies to each additional insured identified in the Task Order, certificates of insurance and endorsements establishing that Buyer has obtained and is maintaining the policies and coverages required of Buyer by the Task Order (if any). Upon request by Seller or any other insured, Buyer shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Buyer may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Task Order.
- G. Failure of Buyer or Seller to demand such certificates or other evidence of the Seller's full compliance with these insurance requirements, or failure of Buyer or Seller to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Seller's obligation to obtain and maintain such insurance.
- H. In addition to the liability insurance required to be provided by Seller, the Buyer, at Buyer's option, may purchase and maintain Buyer's own liability insurance. Buyer's liability policies, if any, operate separately and independently from policies required to be provided by Seller, and Seller cannot rely upon Buyer's liability policies for any of Seller's obligations to the Buyer, Engineer, or third parties.



- I. Seller shall require:
  - 1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Buyer and Engineer (and any other individuals or entities identified in the General Conditions as additional insureds on Seller's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  - 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- J. If either party does not purchase or maintain the insurance required of such party by the Task Order, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- K. If Seller has failed to obtain and maintain required insurance, Seller's entitlement to enter or remain at the Site will end immediately, and Buyer may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Buyer's termination rights under Article 14.
- L. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Task Order Price will be adjusted accordingly.
- M. Buyer does not represent that insurance coverage and limits established in this Task Order necessarily will be adequate to protect Seller or Seller's interests. Seller is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Seller deems necessary.
- N. The insurance and insurance limits required herein will not be deemed as a limitation on Seller's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Buyer and other individuals and entities in the Task Order or otherwise.
- O. All the policies of insurance required to be purchased and maintained under this Task Order will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each additional insured.

#### 6.03 Seller's Insurance

- A. *Required Insurance:* Seller shall purchase and maintain Worker's Compensation, Commercial General Liability, Builders Risk and other insurance pursuant to the specific requirements set forth herein.
- B. *General Provisions:* The policies of insurance required by this Paragraph 5.03 must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Article 13), and longer if expressly required elsewhere in this Task Order, and at all times thereafter when Seller may be correcting, removing, or replacing defective Work as a warranty or correction

obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Task Order;

4. apply with respect to the performance of the Work, whether such performance is by Seller, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; and
  5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Seller's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Task Order, must:
1. include and list as additional insureds the following:
    - a. BUYER: "City of Sweet Home, its officers, employees, agents, and consultants"; AND
    - b. ENGINEER: "West Yost Associates Inc., its officers, employees, agents, and consultants"; AND
    - c. any individuals or entities identified as additional insureds herein.
  2. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  3. not seek contribution from insurance maintained by the additional insured; and
  4. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Seller's acts or omissions, or the acts and omissions of those working on Seller's behalf, in the performance of Seller's operations.
- D. *Other Additional Insureds:* As a supplement to the provisions of Paragraph 5.03.C of the General Conditions, the commercial general liability, automobile liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies must include as additional insureds the Buyer and Engineer.
- E. *Workers' Compensation and Employer's Liability Insurance:* Seller shall purchase and maintain Worker's Compensation and Employer's Liability Insurance. This insurance shall protect SELLER against all claims under applicable state workers' compensation laws, including coverage as necessary for the benefits provided under the United States Longshoremen's and Harbor Workers' Act and the Jones Act. SELLER shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of a workers' compensation law. This policy shall include an "all states" or "other states" and waiver of subrogation endorsements. The liability limits, as required by state law shall be not less than:
1. Workers' Compensation: Statutory
  2. Employer's Liability: \$1,000,000 each occurrence
- F. *Commercial General Liability—Claims Covered:* Seller shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Seller, on an occurrence basis, against claims for:
1. damages because of bodily injury, sickness or disease, or death of any person other than Seller's employees,

2. damages insured by reasonably available personal injury liability coverage, and
  3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- G. *Commercial General Liability—Form and Content:* Seller’s commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage.
    - a. Such insurance must be maintained for three years after final payment.
    - b. Seller shall furnish Buyer and each other additional insured (as identified in the General Conditions or elsewhere in the Task Order) evidence of continuation of such insurance at final payment and three years thereafter.
  2. Blanket contractual liability coverage, including but not limited to coverage of Seller’s contractual indemnity obligations in Paragraph 7.107.
  3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
  4. Underground, explosion, and collapse coverage.
  5. Personal injury coverage.
  6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Seller demonstrates to Buyer that the specified ISO endorsements are not commercially available, then Seller may satisfy this requirement by providing equivalent endorsements.
  7. For design professional additional insureds, ISO Endorsement CG 20 32 07 04 “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- H. *Commercial General Liability Insurance Coverage:* This insurance shall be occurrence type written in comprehensive form and shall protect SELLER, BUYER, and ENGINEER as additional insureds, against claims arising out of performance of the Work. The policy shall also include personal injury liability coverage, contractual liability coverage, completed operations and products liability coverage, and coverage for blasting, explosion, collapse of buildings, and damage to underground property. The liability limits for bodily injury and property damage shall be not less than:
1. Combined Single Limit for each occurrence:       \$2,000,000
  2. General aggregate:                                       \$2,000,000
- I. *Automobile Liability:* Seller shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Bodily Injury</b>	
Each Person	\$1,000,000
Each Accident	\$1,000,000

<b>Automobile Liability</b>	<b>Policy limits of not less than:</b>
<b>Property Damage</b>	
Each Accident	\$1,000,000
<b>[or]</b>	
<b>Combined Single Limit</b>	
Combined Single Limit (Bodily Injury and Property Damage)	\$2,000,000

- J. **Umbrella Liability Insurance:** Seller shall purchase and maintain umbrella liability insurance. This insurance shall protect SELLER, BUYER, and ENGINEER as additional insureds, against claims in excess of the limits provided under workers' compensation and employer's liability, comprehensive automobile liability, and commercial general liability policies. The umbrella policy shall follow the form of the primary insurance, including the application of the primary limits. The liability limits for bodily injury and property damage shall be not less than:

1. Combined Single Limit for each occurrence: \$5,000,000
2. General aggregate: \$5,000,000

- K. **Pollution Liability Insurance:** If not otherwise included in the Seller's Commercial General Liability Insurance coverage, Seller shall purchase and maintain pollution liability insurance for claims arising from the discharge, dispersal, release, escape of any irritant or contaminant into or upon land, any structure, the atmosphere, watercourse, or body of water including groundwater. This shall include coverage for claims of: (a) clean up, either on-site or off site; (b) third party liability, including bodily injury, property damage, natural resource damage, third party property loss of use/revenue, and clean up; and/or (c) costs incurred for regulatory fines and/or the investigation, defense, or settlement of claims. The liability limits for pollution shall not be less than:

1. Combined Single Limit for each occurrence: \$5,000,000
2. General aggregate: \$5,000,000

- L. **Railroad Protective Liability Insurance:** Prior to commencing any Work within 50 feet of railroad-owned and controlled property, Seller shall (1) endorse its commercial general liability policy with ISO CG 24 17, removing the contractual liability exclusion for work within 50 feet of a railroad, (2) purchase and maintain railroad protective liability insurance meeting the following requirements, (3) furnish a copy of the endorsement to Buyer, and (4) submit a copy of the railroad protective policy and other railroad-required documentation to the railroad, and notify Buyer of such submittal.

<b>Railroad Protective Liability Insurance</b>	<b>Policy limits of not less than:</b>
Each Claim	\$ 1,000,000
Aggregate	\$ 2,000,000

- M. **Unmanned Aerial Vehicle Liability Insurance:** If Seller uses unmanned aerial vehicles (UAV—commonly referred to as drones) at the Site or in support of any aspect of the Work, Seller shall obtain UAV liability insurance in the amounts stated; name Buyer, Engineer, and all individuals and entities identified in the General Conditions as additional insureds; and provide a certificate to Buyer confirming Seller's compliance with this requirement. Such insurance will provide coverage for property damage, bodily injury or death, and invasion of privacy.

<b>Unmanned Aerial Vehicle Liability Insurance</b>	<b>Policy limits of not less than:</b>
Each Claim	\$ 100,000
General Aggregate	\$ 250,000

6.04 Builder's Risk and Other Property Insurance

- A. *Builder's Risk*: Seller shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the General Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the General Conditions.
- B. *Property Insurance for Facilities of Buyer Where Work Will Occur*: Buyer is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Article 13.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Buyer will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Article 13. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Buyer's procurement of such property insurance.
- D. *Partial Occupancy or Use by Buyer*: If Buyer will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, , then Buyer (directly, if it is the purchaser of the builder's risk policy, or through Seller) will provide advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Task Order do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Seller elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Seller's expense.
- F. *Builder's Risk Requirements*: The builder's risk insurance must:
  - 1. be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

- a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.
  - b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to Buyer and Seller.
2. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Buyer-furnished or assigned property; (b) spare parts inventory required within the scope of the Task Order; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of Sellers, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier). If this coverage is subject to a sublimit, such sublimit will be a minimum of \$2,000,000.
5. extend to cover damage or loss to insured property while in transit. If this coverage is subject to a sublimit, such sublimit will be a minimum of \$2,000,000.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Task Order.
7. allow for partial occupancy or use by Buyer by endorsement, and without cancellation or lapse of coverage.
8. include performance/hot testing and start-up, if applicable.
9. be maintained in effect until the Work is complete, as set forth in Paragraph 15.06.D of the General Conditions, or until written confirmation of Buyer's procurement of property insurance following Substantial Completion, whichever occurs first.
- 10 include as named insureds the Buyer, Seller, Subcontractors (of every tier), and any other individuals or entities required by this Task Order to be insured under such builder's risk policy. Parties required to be insured will be referred to collectively as "insureds." In addition to Buyer, Seller, and Subcontractors of every tier, include as insureds the following:
  - a. West Yost Associates, Inc.  
Charles Duncan, President  
2020 Research Park Drive, Suite 100  
Davis, CA 95618  
503.756.5905; CDuncan@westyost.com

11. include, in addition to the Task Order Price amount, the value of the following equipment and materials to be installed by the Seller but furnished by the Buyer or third parties:
  - a. Electrical motor control centers, control panels and other equipment to be supplied by Buyer's Integrator-of-Record, such sublimit will be a minimum of \$3,000,000.
12. If debris removal in connection with repair or replacement of insured property is subject to a coverage sublimit, such sublimit will be a minimum of \$5,000,000.

6.05 Property Losses; Subrogation

- A. The builder's risk insurance policy purchased and maintained, at Contactor's expense, in accordance with Paragraph 5.04 (or an installation floater policy if authorized), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
  1. Buyer and Seller waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the General Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
  2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Buyer or Seller as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by Buyer covering any loss, damage, or consequential loss to Buyer's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Buyer; or to part or all of the completed or substantially completed Work, during partial occupancy or use, after Substantial Completion, or after final payment pursuant to Paragraph 13.05, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Seller, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written Task Order executed prior to the loss, damage, or consequential loss.
  1. Buyer waives all rights against Seller, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.
- C. The waivers in this Paragraph 5.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Buyer's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.

- D. Seller shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Buyer, Seller, all individuals or entities identified in the General Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 6.06 Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 5.04 will be adjusted and settled with the Seller and Buyer. Seller and Buyer shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer to the Seller and Buyer as the fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. Seller and Buyer receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Task Order or applicable Laws and Regulations.
- C. If no other special agreement is reached, Seller shall repair or replace the damaged Work, using allocated insurance proceeds.

### ARTICLE 6—LICENSES AND FEES

#### 6.01 *Intellectual Property and License Fees*

- A. Except to the extent stated elsewhere in the Procurement Task Order Documents, Seller is not transferring any patent rights, copyrights, or other intellectual property rights for the Goods delivered.
- B. To the extent Seller is manufacturing to Buyer's design, Buyer retains all patent rights, copyrights, and other intellectual property rights in such design.
- C. If an invention, design, process, product, or device is specified in the Procurement Task Order Documents for incorporation in the Goods or for the performance of Special Services, and if, to the actual knowledge of Buyer or Engineer, its use is subject to patent rights, copyrights, or other intellectual property rights calling for the payment of a license fee or royalty to others, then the existence of such rights and payment obligations will be disclosed to Seller in the Procurement Task Order Documents.
- D. Seller shall pay all license fees and royalties and assume all costs incident to the use or the furnishing of the Goods, unless specified otherwise by the Procurement Task Order Documents.

#### 6.02 *Seller's Infringement*

- A. Subject to Paragraph 6.01, to the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against



all claims, costs, losses, damages, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement or alleged infringement of any patent, copyright, or other intellectual property right by any of the Goods as delivered or Special Services as performed.

- B. Buyer will promptly notify Seller in writing of any claim, suit, or threat of suit by a third party for any infringement or alleged infringement of any patent, copyright, or other intellectual property right with respect to the Goods as delivered or Special Services as performed.
- C. Seller shall promptly defend or settle the claim or suit. Seller shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
  - 1. If Seller fails to defend such suit or claim after written notice by Buyer, Seller will be bound, in any subsequent suit or claim against Seller by Buyer, by any factual determination in the prior suit or claim.
  - 2. If Buyer fails to provide Seller the opportunity to defend such suit or claim, Buyer shall be barred from any remedy against Seller for such suit or claim.
- D. If a determination is made that Seller has infringed upon the intellectual property rights of another, Seller may, at Seller's own expense, obtain the necessary licenses for Buyer's benefit, or replace the Goods and provide related design and construction, consistent with the requirements of the Procurement Task Order Documents, to avoid the infringement.

#### 6.03 *Buyer's Infringement*

- A. Subject to Paragraph 6.01, and to the fullest extent permitted by Laws and Regulations, Buyer shall be responsible to Seller for any infringement or alleged infringement of any patent, copyright, or other intellectual property right caused by Seller's compliance with the Procurement Drawings or Procurement Specifications, and will reimburse Seller for any license fee or royalties paid by Seller to others if such payment resulted from any invention, design, process, product, or device specified to be furnished or performed in the Procurement Drawings or Procurement Specifications, but not identified as being subject to payment of such license fee or royalty.
- B. Seller will promptly notify Buyer in writing of any claim, suit, or threat of suit by a third party for intellectual property infringement arising from Seller's compliance with the Procurement Drawings or Procurement Specifications.
- C. Buyer shall defend or settle the claim or suit. Buyer shall have control over such claim or suit, bear all expenses, and satisfy any adverse judgment.
  - 1. If Buyer fails to defend such suit or claim after written notice by Seller, Buyer will be bound, in any subsequent suit or claim against Buyer by Seller, by any factual determination in the prior suit or claim.
  - 2. If Seller fails to provide Buyer the opportunity to defend such suit or claim, Seller shall be barred from any remedy against Buyer for such suit or claim.

## ARTICLE 7—SELLER’S RESPONSIBILITIES

### 7.01 *Performance of Obligations*

- A. Seller shall be solely responsible for the means, methods, techniques, sequences, and procedures necessary to perform its obligations in accordance with the Procurement Task Order Documents.
- B. Seller shall supervise, inspect, and direct the furnishing of the Goods and Special Services competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform its obligations in accordance with the Procurement Task Order Documents.
- C. Seller shall coordinate the provision of Special Services to avoid or limit interference or disruption of other activities at the location where the Special Services are to occur, including but not limited to ongoing facility operations and construction activities.

### 7.02 *Labor, Materials and Equipment*

- A. Seller shall provide competent, qualified and trained personnel in all aspects of its performance of the Procurement Task Order.
- B. All Goods, and all equipment and material incorporated into the Goods, must be as specified, and unless specified otherwise in the Procurement Task Order Documents, must be:
  - 1. new, and of good quality;
  - 2. protected, assembled, connected, cleaned, and conditioned in accordance with the original manufacturer’s instructions; and
  - 3. shop-assembled to the greatest extent practicable.

### 7.03 *Laws and Regulations*

- A. Seller shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of its obligations in accordance with the Procurement Task Order Documents. Except where otherwise expressly required by such Laws and Regulations, neither Buyer nor Engineer shall be responsible for monitoring Seller’s compliance with any Laws or Regulations.
- B. If Seller furnishes Goods and Special Services knowing or having reason to know that such furnishing is contrary to Laws or Regulations, Seller shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such performance. It will not be Seller’s responsibility to make certain that the Procurement Specifications and Procurement Drawings are in accordance with Laws and Regulations, but this provision will not relieve Seller of Seller’s obligations under Paragraph 3.03.
- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Procurement Task Order if there were no Bids) that have a direct effect on the cost or time of Seller’s performance will be the subject of an adjustment in Procurement Task Order Price or Procurement Task Order Times. If Buyer and Seller are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Article 12.

- D. Seller shall comply with all applicable state and federal regulations as required by the Oregon Infrastructure Finance Authority of the Business Development Department and Oregon Health Authority, including, but not limited to:
1. Design and fabrication shall comply with application sections of ORS Chapter 333 Division 61 for Drinking Water, establishing design and construction standards for drinking water systems in Oregon.
  2. State procurement regulations found in the Oregon Public Contracting Code, ORS chapters 279A, 279B and 279C.
  3. State labor standards and wage rates found in ORS 279C.
  4. Manufacturer's certification of compliance with the American Iron and Steel (AIS) requirements of Section 746, Division A, Title VII of the Consolidated Appropriations Act of 2017.
    - a. "Iron and steel products" are defined as the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.
    - b. Only items on the above list made primarily of iron or steel, permanently incorporated into the project must be produced in the United States. For example trench boxes, scaffolding or equipment, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel.
    - c. "Minor components" are components within an iron and/or steel product otherwise compliant with the American Iron and Steel requirements. This is different from the de minimis definition where de minimis pertains to the entire project and the minor component definition pertains to a single product. This waiver, would allow non-domestically produced miscellaneous minor components comprising up to five percent of the total material cost of an otherwise domestically produced iron and steel product to be used. This waiver does not exempt the whole product from the AIS requirements only minor components within said product and the iron or steel components of the product must be produced domestically.

#### 7.04 "Or Equals"

- A. Whenever an item of material or equipment to be incorporated into the Goods is specified or described in the Procurement Task Order Documents by using the names of one or more proprietary items or specific suppliers or manufacturers, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, other items of material or equipment or material or equipment of other suppliers or manufacturers may be submitted to Buyer for Engineer's review.
1. If in Engineer's sole discretion, such an item of material or equipment proposed by Seller is functionally equal to that named and sufficiently similar so that no change in related work will be required, it may be considered by Engineer as an "or equal" item.

2. For the purposes of this paragraph, a proposed item of material or equipment may be considered functionally equal to an item so named only if in the exercise of reasonable judgment, Engineer determines that: 1) it is at least equal in quality, durability, appearance, strength, and design characteristics; 2) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole; 3) it has an acceptable record of performance and availability of responsive service; and (4) Seller certifies that if approved: a) there will be no increase in any cost, including capital, installation or operating costs, to Buyer; and b) the proposed item will conform substantially to the detailed requirements of the item named in the Procurement Task Order Documents.
- B. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or Submittal made pursuant to Paragraph 7.04.A. Engineer will be the sole judge of whether to accept or reject such a proposal or Submittal. No "or equal" will be ordered, manufactured or utilized until Engineer's review is complete, which will be evidenced by an approved Shop Drawing. Engineer will advise Buyer and Seller in writing of any negative determination. Notwithstanding Engineer's approval of an "or-equal" item, Seller shall remain obligated to comply with the requirements of the Procurement Task Order Documents.
  - C. *Special Guarantee:* Buyer may require Seller to furnish at Seller's expense a special performance guarantee or other surety with respect to any such proposed "or-equal."
  - D. *Data:* Seller shall provide all data in support of any such proposed "or equal" at Seller's expense.

#### 7.05 Taxes

- A. Seller shall pay all taxes and duties arising out of the sale of the Goods and the performance of Special Services. All taxes and duties are included in the Procurement Task Order Price, except as noted in the General Conditions.

#### 7.06 Submittals

##### A. Shop Drawing and Sample Requirements

1. Before submitting a Shop Drawing or Sample, Seller shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Procurement Task Order Documents;
  - b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal; and
    - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of Seller's obligations.
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.

2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Seller has satisfied its obligations under the Procurement Task Order Documents with respect to Seller's review of that Submittal, and that Seller approves the Submittal.
  3. With each Shop Drawing or Sample, Seller shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Procurement Task Order Documents. This notice will be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Seller shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
    - a. Seller shall submit the number of copies required in the Procurement Specifications.
    - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Seller proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.06.C.
  2. *Samples*
    - a. Seller shall submit the number of Samples required in the Procurement Specifications.
    - b. Seller shall clearly identify each Sample as to material, supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.06.C.
  3. Where a Shop Drawing or Sample is required by the Procurement Task Order Documents or the Schedule of Submittals, any related work performed by Seller prior to Engineer's review and approval of the pertinent Submittal will be at the sole expense and responsibility of Seller.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's favorable review will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Goods, comply with the requirements of the Procurement Task Order Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Procurement Task Order Documents.
  2. Engineer's favorable review will not extend to means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or to safety precautions or programs incident thereto.
  3. Engineer's favorable review of a separate item as such will not indicate approval of the assembly in which the item functions.

4. Engineer's favorable review of a Shop Drawing or Sample will not relieve Seller from responsibility for any variation from the requirements of the Procurement Task Order Documents unless Seller has complied with the requirements of Paragraph 7.06.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Procurement Task Order Documents in a Field Order or other appropriate Procurement Task Order modification.
5. Engineer's favorable review of a Shop Drawing or Sample will not relieve Seller from responsibility for complying with the requirements of Paragraphs 7.06.A and B.
6. Engineer's favorable review of a Shop Drawing or Sample, or of a variation from the requirements of the Procurement Task Order Documents, will not, under any circumstances, change the Procurement Task Order Times or Procurement Task Order Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, acceptance or favorable review of a Shop Drawing or Sample will result in such item becoming a Procurement Task Order Document.
8. Seller shall furnish Goods that comply with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.06.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

1. Seller shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Seller shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Seller shall furnish required Shop Drawing and Sample Submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Seller shall be responsible for Engineer's charges to Buyer for such time. Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges.
3. If Seller requests a change of a previously favorably reviewed Shop Drawing or Sample, Seller shall be responsible for Engineer's charges to Buyer for its review time, and Buyer may impose a set-off against payments due Seller to secure reimbursement for such charges, unless the need for such change is beyond the control of Seller.

*E. Submittals Other than Shop Drawings and Samples*

1. The following provisions apply to all Submittals other than Shop Drawings and Samples:
  - a. Seller shall submit all such Submittals to the Engineer in accordance with the schedule of Submittals and pursuant to the applicable terms of the Procurement Task Order Documents.
  - b. Engineer will provide timely review of all such Submittals in accordance with the schedule of Submittals and return such Submittals with a notation of either

Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the schedule of Submittals will be deemed accepted.

- c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Procurement Task Order Documents as to general form and content of the Submittal.
  - d. If any such Submittal is not accepted, Seller shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.04 and 2.05.

#### **7.07 Indemnification**

- A. To the fullest extent permitted by Laws and Regulations, Seller shall indemnify and hold harmless Buyer, Engineer, Operations Contractor, Project Owner, and any assignee of Buyer, and their officers, directors, members, partners, employees, agents, consultants, contractors, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of Seller's obligations under the Procurement Task Order, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Goods themselves), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Seller, or any individual or entity directly or indirectly employed by Seller or anyone for whose acts Seller may be liable.
- B. In any and all claims against Buyer, Engineer, Project Owner, or any assignee of Buyer, including Contractor/Assignee, or their officers, directors, members, partners, employees, agents, consultants, contractors, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Seller, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to furnish any of the Goods and Special Services, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.07.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Seller or any such subcontractor, supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### **7.08 Concerning Subcontractors and Suppliers**

- A. Seller may retain subcontractors and suppliers for the performance of parts of the furnishing of the Goods and Special Services. The Seller's retention of a subcontractor or supplier will not relieve Seller's obligation to Buyer to perform and complete the furnishing the Goods and Special Services in accordance with the Procurement Task Order Documents.

### **ARTICLE 8—SHIPPING AND DELIVERY**

#### **8.01 Shipping**

- A. Seller shall select the carrier and bear all costs of packaging, transportation, insurance, special handling, and all other costs associated with shipment and delivery.

## 8.02 *Delivery*

- A. Seller shall deliver the Goods free on board (FOB) to the Point of Destination, freight prepaid, in accordance with the Procurement Task Order Times set forth in the Procurement Agreement, or other date agreed to by Buyer and Seller.
- B. At least 10 days before shipment, Seller shall provide written notice to Buyer of the manner of shipment and the anticipated delivery date. The notice must also include any instructions concerning special equipment or services required at the Point of Destination to unload and care for the Goods. Seller shall also require the carrier to give Buyer at least 24 hours' notice by telephone prior to the anticipated time of delivery.
- C. Buyer will be responsible and bear all costs for unloading the Goods from carrier.
- D. Buyer will assure that adequate facilities are available to receive delivery of the Goods at the time established for delivery, or on another date agreed to by Buyer and Seller.
- E. No partial deliveries will be allowed, unless permitted or required by the Procurement Task Order Documents or agreed to in writing by Buyer.
- F. Provisions governing inspection on delivery are set forth in Paragraph 9.02.

## 8.03 *Risk of Loss*

- A. Risk of loss and insurable interests transfer from Seller to Buyer upon Buyer's receipt of the Goods.
- B. Notwithstanding the provisions of Paragraph 8.03.A, if Buyer rejects the Goods as non-conforming, the risk of loss on such Goods will remain with Seller until Seller corrects the non-conformity or Buyer accepts the Goods. If rejected Goods remain at the Point of Destination pending modification and acceptance, then Seller shall be responsible for arranging adequate protection and maintenance of the Goods at Seller's expense.

# ARTICLE 9—BUYER'S RIGHTS

## 9.01 *Seller's Warranties and Guarantees*

- A. Seller warrants and guarantees to Buyer that the title to the Goods conveyed will be proper, its transfer rightful, and free from any security interest, lien, or other encumbrance. Seller shall defend, indemnify, and hold Buyer harmless against any liens, claims, or demands contesting or affecting title of the Goods conveyed.
- B. Seller warrants and guarantees to Buyer that all Goods and Special Services will conform with the Procurement Task Order Documents, and with the standards established by any Samples approved by Engineer. Engineer shall be entitled to rely on Seller's warranty and guarantee. If the Procurement Task Order Documents do not otherwise specify the characteristics or the quality of the Goods, the Goods must comply with the requirements of Paragraph 7.02.B.
- C. Seller's warranty and guarantee hereunder excludes defects or damage caused by:
  - 1. abuse, improper modification, improper maintenance, or improper operation by persons other than Seller;
  - 2. excessive corrosion or chemical attack, unless corrosive or chemically-damaging conditions were disclosed by Buyer in the Procurement Task Order Documents and the Procurement Task Order Documents required the Goods to withstand such conditions;



3. use in a manner contrary to Seller's written instructions for installation, operation, and maintenance; or
  4. normal wear and tear under normal usage.
- D. Seller's obligation to furnish the Goods and Special Services in accordance with the Procurement Task Order Documents will be absolute. None of the following will constitute an acceptance of Goods and Special Services that are non-conforming, or a release of Seller's obligation to furnish the Goods and Special Services in accordance with the Procurement Task Order Documents:
1. observations by Buyer, Engineer, or Project Owner;
  2. recommendation by Engineer or payment by Buyer of any progress or final payment;
  3. use of the Goods by Buyer or Project Owner;
  4. any acceptance by Buyer, Engineer, or Project Owner, or any failure to do so;
  5. the end of the correction period established in Paragraph 9.04;
  6. the issuance of a notice of acceptance;
  7. any inspection, test or approval by others; or
  8. any correction of non-conforming Goods and Special Services by Buyer or Project Owner.
- E. Buyer shall promptly notify Seller of any breach of Seller's warranties or guarantees.

## 9.02 *Inspections and Testing*

### A. *General Provisions*

1. The Procurement Task Order Documents specify required inspections and tests. Buyer shall have the right to perform, or cause to be performed, reasonable inspections and require reasonable tests of the Goods at Seller's facility, and at the Point of Destination. Seller shall allow Buyer a reasonable time to perform such inspections or tests.
2. Seller shall reimburse Buyer for all expenses, except for travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, for inspections and tests specified in the Procurement Task Order Documents. If as the result of any such specified testing the Goods are determined to be non-conforming, then Seller shall also bear the travel, lodging, and subsistence expenses of Buyer's and Engineer's representatives, and all expenses of re-inspection or retesting.
3. Buyer shall bear all expenses of inspections and tests that are not specified in the Procurement Task Order Documents (other than any re-inspection or retesting resulting from a determination of non-conformity, as set forth in Paragraph 9.03); provided, however, that if as the result of any such non-specified inspections or testing the Goods are determined to be non-conforming, then Seller shall bear all expenses of such inspections and testing, and of any necessary re-inspection and retesting.
4. Seller shall provide Buyer timely written notice of the readiness of the Goods for all inspections, tests, or approvals which the Procurement Task Order Documents specify are to be observed by Buyer prior to shipment.

5. Buyer will give Seller timely notice of all specified tests, inspections, and approvals of the Goods which are to be conducted at the Point of Destination, and a representative of Seller will attend such tests, inspections, and approvals.
6. If, on the basis of inspections or testing, the Goods appear to be conforming, Buyer will give Seller prompt notice thereof. If on the basis of inspections or testing, the Goods appear to be non-conforming, Buyer will give Seller prompt notice thereof and will advise Seller of the remedy Buyer elects under the provisions of Paragraph 9.03.
7. Neither payments made by Buyer to Seller prior to any tests or inspections, nor any tests or inspections, will constitute acceptance of non-conforming Goods, or prejudice Buyer's rights under the Procurement Task Order.

**B. *Visual Inspection on Delivery***

1. Buyer will visually inspect the Goods upon delivery solely for purposes of identifying the Goods, general verification of quantities, and observation of apparent condition. Such visual inspection will not be construed as final or as receipt of any Goods and Special Services that, as a result of subsequent inspections and tests, are determined to be non-conforming.
2. If, on the basis of the visual inspection specified in Paragraph 9.02.B.1, the Goods appear to comply with the requirements of the Procurement Task Order Documents as to quantities and condition, then within 10 days of delivery Buyer shall issue to Seller Buyer's acknowledgment of the receipt of Goods.

**C. *Final Inspection***

1. After all of the Goods have been incorporated into the Project, tested in accordance with such testing requirements as are specified, and are functioning as required, and Seller has performed and completed all Special Services, Buyer will make a final inspection.
2. If, on the basis of the final inspection, Buyer determines that the Goods and Special Services are conforming, Buyer's notice thereof will constitute Buyer's acceptance of the Goods and Special Services, subject to any limitations stated in the notice.
3. If, on the basis of the final inspection, the Goods and Special Services are non-conforming, Buyer will identify the non-conformity in writing.

**9.03 *Non-Conforming Goods and Special Services***

- A.** If, on the basis of inspections and testing prior to delivery, the Goods and Special Services are found to be non-conforming, or if at any time after Buyer has acknowledged receipt of delivery and before the expiration of the correction period described in Paragraph 9.04, Buyer determines that the Goods and Special Services are non-conforming, then Seller shall promptly, without cost to Buyer and in response to written instructions from Buyer, either correct such non-conforming Goods and Special Services, or, if Goods are rejected by Buyer, remove and replace the non-conforming Goods with conforming Goods, including all work required for reinstallation.

**B. *Buyer's Rejection of Non-Conforming Goods***

1. If Buyer elects to reject the Goods in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Goods. If Goods have been

delivered to Buyer, Seller shall promptly, and within the Procurement Task Order Times, remove and replace the rejected Goods.

2. Seller shall bear all costs, losses and damages attributable to the removal, replacement, reinspection, and retesting of the non-conforming Goods.
3. Upon rejection of the Goods, Buyer retains a security interest in the Goods to the extent of any payments made and expenses incurred in their testing and inspection.

C. *Buyer's Rejection of Non-Conforming Special Services*

1. If at any time Buyer elects to reject the Special Services in whole or in part, Buyer's notice to Seller will describe in sufficient detail the non-conforming aspect of the Special Services.
2. Seller shall promptly provide conforming Special Services acceptable to Buyer.
3. If Seller fails to provide conforming Special Services, Buyer may remove the Special Services from the scope of the Procurement Task Order, and equitably reduce the Procurement Task Order Price.

D. *Remedying Non-Conforming Goods:* If Buyer elects to permit the Seller to modify the Goods to correct the non-conformance, then Seller shall promptly provide a schedule for such modifications and shall make the Goods conforming within a reasonable time.

E. *Buyer's Acceptance of Non-Conforming Goods:* Instead of requiring correction or removal and replacement of non-conforming Goods discovered either before or after final payment, Buyer may accept the non-conforming Goods. Seller shall bear all reasonable costs, losses, and damages attributable to Buyer's evaluation of and determination to accept such non-conforming Goods.

F. *Seller Obligations:* Seller shall pay all claims, costs, losses, and damages, including but not limited to all fees and charges for re-inspection, retesting and for any engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs arising out of or relating to the non-conforming Goods and Special Services. Seller's obligations will include the costs of the correction or removal and replacement of the non-conforming Goods and the replacement of property of Buyer and others destroyed by the correction or removal and replacement of the non-conforming Goods, and obtaining conforming Special Services from others.

G. *Buyer's Rejection of Conforming Goods:* If Buyer asserts that Goods and Special Services are non-conforming and such Goods and Special Services are determined to be conforming, or if Buyer rejects as non-conforming Goods and Special Services that are later determined to be conforming, then Seller shall be entitled to reimbursement from Buyer of costs incurred by Seller in inspecting, testing, correcting, removing, or replacing the conforming Goods and Special Services, including but not limited to fees and charges of engineers, architects, attorneys and other professionals, and all court or arbitration or other dispute resolution costs associated with the incorrect assertion of non-conformance or rejection of conforming Goods and Special Services.

#### 9.04 *Correction Period*

- A. Seller's responsibility for correcting all non-conformities in the Goods and Special Services will extend for a period of one year after the acceptance of the Goods and Special Services in accordance with Paragraph 9.02.C.2.
- B. Where non-conforming Goods and Services (and damage to other work resulting therefrom) have been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Goods and Services will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- C. Seller's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph may not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

### **ARTICLE 10—ENGINEER'S STATUS**

#### 10.01 *Engineer's Role Defined*

- A. Engineer will be Buyer's representative until assignment (if any) of the Procurement Task Order.
- B. The duties and responsibilities and the limitations of authority of Engineer prior to assignment, if any, of the Procurement Task Order, are set forth in the Procurement Task Order Documents.
- C. Engineer's responsibilities, if any, after an assignment (if any) of the Procurement Task Order, are set forth in the Procurement Agreement.

#### 10.02 *Duties and Responsibilities; Authority; Limitations*

- A. As set forth in Article 3, Engineer will be the initial interpreter of the Procurement Task Order Documents and judge of the acceptability of the Goods and Special Services, and will issue clarifications, interpretations, and decisions regarding such issues.
- B. Acting on behalf of Buyer under the provisions of Article 9, Engineer has the authority to disapprove or reject Goods and Special Services that Engineer believes to be non-conforming. Engineer also has the authority to require special inspection or testing of the Goods or Special Services as provided in Paragraph 9.02, whether or not the Goods are fabricated or installed, or the Special Services are completed.
- C. Engineer may authorize minor deviations or variations in the Procurement Task Order Documents by: 1) written approval of specific variations set forth in Shop Drawings when Seller has duly noted such variations as required in Paragraph 7.06.A.3, or 2) a Field Order.
- D. As set forth in Article 12, Engineer will review Claims, and render decisions on Claims.
- E. In rendering any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, and judgments, Engineer will not show partiality to Buyer or Seller. Engineer will not be liable to Buyer, Seller, or others in connection with any interpretations, clarifications, reviews, decisions, disapprovals, acceptances, rejections, authorizations, or judgments conducted or rendered by Engineer in good faith.

- F. Engineer will not supervise, direct, control, or have authority over or be responsible for the means, methods, techniques, sequences, or procedures used by Seller to perform its obligations under this Procurement Task Order, or the safety precautions and programs incident thereto, or for any failure of Seller to comply with Laws and Regulations applicable to the performance of its obligations. Engineer will not be responsible for Seller's failure to furnish the Goods and Special Services in accordance with the Procurement Task Order Documents.

## **ARTICLE 11—CHANGES**

### **11.01 *Amending and Supplementing the Procurement Task Order***

- A. The Procurement Task Order may be amended or supplemented by a Change Order, a Change Directive, or a Field Order.
- B. If an amendment or supplement to the Procurement Task Order includes a change in the Procurement Task Order Price or the Procurement Task Order Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Procurement Task Order that involve (1) the conformance or acceptability of the Goods and Special Services, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Buyer and Seller may amend other terms and conditions of the Procurement Task Order without the recommendation of the Engineer.

### **11.02 *Change Orders***

- A. Buyer and Seller shall execute appropriate Change Orders covering:
  - 1. Changes in Procurement Task Order Price or Procurement Task Order Times which are agreed to by the parties, including any undisputed sum or amount of time for Goods and Special Services furnished in accordance with a Change Directive;
  - 2. Changes in Procurement Task Order Price resulting from a Buyer set-off, unless Seller has duly contested such set-off;
  - 3. Changes in the Goods and Special Services which are: (a) ordered by Buyer pursuant to Paragraph 11.05, (b) required because of Buyer's acceptance of non-conforming Goods and Services under Paragraph 9.03 or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Goods and Special Services involves the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters; and
  - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Change Directive; Article 12, Claims; and similar provisions.
- B. If Buyer or Seller refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

### **11.03 *Change Directives***

- A. A Change Directive will not change the Procurement Task Order Price or the Procurement Task Order Times but is evidence that the parties expect that the modification ordered or

documented by a Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Change Directive's effect, if any, on the Procurement Task Order Price and Procurement Task Order Times; or, if negotiations are unsuccessful, by a determination under the terms of the Procurement Task Order Documents governing adjustments, expressly including Paragraph 11.08 regarding change of Procurement Task Order Price.

- B. If Buyer has issued a Change Directive and Buyer or Seller believes that an adjustment in Procurement Task Order Times or Procurement Task Order Price is necessary, then such party shall submit a Claim seeking such an adjustment no later than 30 days after the completion of the Goods and Services set out in the Change Directive.

#### 11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Goods and Services if the changes do not involve an adjustment in the Procurement Task Order Price or the Procurement Task Order Times and are compatible with the design concept as indicated by the Procurement Task Order Documents. Such changes will be accomplished by a Field Order and will be binding on Buyer and also on Seller, which shall perform the Goods and Special Services involved promptly.
- B. If Seller believes that a Field Order justifies an adjustment in the Procurement Task Order Price or Procurement Task Order Times, then before proceeding with the Goods and Special Services at issue, Seller shall submit a Claim as provided herein.

#### 11.05 *Buyer-Authorized Changes in the Goods and Special Services*

- A. Without invalidating the Procurement Task Order and without notice to any surety, Buyer may, at any time or from time to time, order additions, deletions, or revisions in the Goods and Special Services. Changes involving the design (as set forth in the Procurement Drawings, Procurement Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Goods and Special Services may be accomplished by a Change Order, if Buyer and Seller have agreed as to the effect, if any, of the changes on Procurement Task Order Times or Procurement Task Order Price; or by a Change Directive. Upon receipt of any such document, Seller shall promptly proceed with the Goods and Special Services involved; or, in the case of a deletion in the Goods and Special Services, promptly cease activities with respect to such deletion. Added or revised Goods and Special Services must be performed under the applicable conditions of the Procurement Task Order Documents.

#### 11.06 *Buyer's Contingency Allowance*

- A. The Buyer's Contingency Allowance, if any such, is set forth in the Procurement Agreement, is for the sole use of Buyer to cover unanticipated costs.
- B. If Buyer exercises its unilateral right to use all or a portion of the Buyer's Contingency Allowance, Buyer will issue a written directive that documents the costs to which the allowance is applied, Seller's entitlement to compensation, and the consequent reduction in such allowance.
- C. Prior to final payment, the Total Price, as set forth in the Procurement Agreement, will be duly adjusted to account for any unused portion of the Buyer's Contingency Allowance.

- D. The Procurement Agreement, Article 5, addresses the impact on Buyer's Contingency Allowance of an assignment of the Procurement Task Order.

#### 11.07 *Unauthorized Changes in the Goods and Special Services*

- A. Seller shall not be entitled to an increase in the Procurement Task Order Price or an extension of the Procurement Task Order Times with respect to any work performed that is not required by the Procurement Task Order Documents, as amended, modified, or supplemented.

#### 11.08 *Change of Procurement Task Order Price*

- A. The Procurement Task Order Price may only be changed by a Change Order. Any Claim for an adjustment of Procurement Task Order Price must comply with the provisions of Article 12.
- B. An adjustment in the Procurement Task Order Price will be determined as follows:
  - 1. For changes in Unit Price Goods and Special Services, by application of the unit prices to the quantities of the items involved;
  - 2. To the extent the cost of the change is not covered by unit prices, then by a mutually agreed lump sum; or
  - 3. To the extent the cost of the change is not covered by unit prices and the parties do not reach mutual agreement to a lump sum, then on the basis of documented costs plus a Seller's fee for overhead and profit of 15%.

#### 11.09 *Change of Procurement Task Order Times*

- A. The Procurement Task Order Times may only be changed by a Change Order. Any Claim for an adjustment in the Procurement Task Order Times must comply with the provisions of Article 12.

#### 11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Goods and Special Services or the provisions of the Procurement Task Order (including, but not limited to, Procurement Task Order Price or Procurement Task Order Times), the giving of any such notice will be Seller's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

### **ARTICLE 12—CLAIMS, DISPUTES, AND DISPUTE RESOLUTION**

#### 12.01 *Claims*

- A. The parties agree to endeavor to avoid or resolve Claims through direct, good faith discussions and negotiations whenever practicable. Such discussions and negotiations should at the outset address whether the parties mutually agree to suspend the Claims process, including the time periods established in this Paragraph 12.01; if so, a written record of such mutual agreement should be made and jointly executed.
- B. Claimant shall deliver to Engineer and the other party to the Procurement Task Order written notice of each Claim within 15 days after the occurrence of the event giving rise to the Claim.

- C. Claimant shall deliver written supporting data to Engineer and the other party within 45 days after such occurrence unless Engineer allows an additional period of time.
- D. Engineer will review each such Claim and render a decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- E. If Engineer does not render a formal written decision on a Claim within the time stated in Paragraph 12.01.D., Engineer shall be deemed to have issued a decision denying the Claim in its entirety 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.
- F. The rendering of a decision by Engineer pursuant to this Paragraph 12.01 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment) will be a condition precedent to any exercise by Buyer or Seller of such rights or remedies as either may otherwise have under the Procurement Task Order Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter. If the exercise of such rights or remedies will imminently be time-barred, a party may take actions necessary to preserve such rights and remedies notwithstanding the lack of the condition precedent referred to in this paragraph.
- G. If a submitted matter in question concerns terms and conditions of the Procurement Task Order Documents that do not involve (1) the performance or acceptability of Goods and Special Services under the Procurement Task Order Documents, (2) the design (as set forth in the Procurement Drawings, Procurement Specifications, Addenda, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Buyer and Seller that Engineer is unable to provide a decision or interpretation. If Buyer and Seller are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Paragraph 12.02.
- H. Engineer's written decision on such Claim or a decision denying the Claim in its entirety that is deemed to have been issued pursuant to Paragraph 12.01, will be final and binding upon Buyer and Seller 30 days after it is issued unless within 30 days of issuance Buyer or Seller appeals Engineer's decision by initiating the mediation of such Claim in accordance with the dispute resolution procedures set forth in Paragraph 12.02.
- I. If Article 12 has been amended to delete the mediation requirement, then Buyer or Seller may appeal Engineer's decision within 30 days of issuance by following the alternative dispute resolution process set forth in Article 12, as amended; or if no such alternative dispute resolution process has been set forth, Buyer or Seller may appeal Engineer's decision by 1) delivering to the other party within 30 days of the date of such decision a written notice of intent to submit the Claim to a court of competent jurisdiction, and 2) within 60 days after the date of such decision instituting a formal proceeding in a court of competent jurisdiction.
- J. No Claim for an adjustment in Procurement Task Order Price or Procurement Task Order Times will be valid if not submitted in accordance with Article 12.

#### 12.02 *Dispute Resolution Method*

- A. Either Buyer or Seller may initiate the mediation of (1) any Claim decided in writing by Engineer under Paragraph 12.01 before such decision becomes final and binding, or (2) any other dispute between the parties, including but not limited to any dispute arising after final inspection of the Goods and Services. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective



Date of the Procurement Task Order. The request for mediation must be submitted in writing to the American Arbitration Association and the other party to the Procurement Task Order. Timely submission of the request will stay Engineer's decision from becoming final and binding.

- B. Mediation is a condition precedent to seeking final dispute resolution under Paragraph 12.01.C. Buyer and Seller shall participate in the mediation process in good faith. The process must be concluded within 60 days of filing of the request. The date of termination of the mediation will be determined by application of the mediation rules referenced above.
- C. If the mediation process does not result in resolution of the dispute, then Engineer's written Claim decision under Paragraph 12.01.D or a Claim denial pursuant to Paragraph 12.01.E becomes final and binding, or if applicable such other dispute is deemed resolved in favor of respondent, unless, within 30 days after termination of the mediation, Buyer or Seller:
  - 1. elects in writing to invoke any final dispute resolution process provided for in the Supplementary Conditions, or
  - 2. agrees with the other party to submit the Claim or dispute to another final dispute resolution process, or
  - 3. if no final dispute resolution process has been provided for in the Supplementary Conditions, delivers to the other party written notice of the intent to submit the Claim or dispute to a court of competent jurisdiction, and within 60 days of the termination of the mediation institutes such formal proceeding.

## **ARTICLE 13—PAYMENT**

### **13.01 *Applications for Progress Payments***

- A. Seller shall submit to Buyer for Engineer's review Applications for Payment filled out and signed by Seller and accompanied by such supporting documentation as is required by the Procurement Task Order Documents and also as Buyer or Engineer may reasonably require.
- B. The timing and amounts of progress payments will be as stipulated in the Procurement Agreement.
- C. Any Application for Payment that is based in whole or in part on the delivery of Goods must be accompanied by a bill of sale, invoice, or other documentation reasonably satisfactory to Buyer warranting that Buyer has rightfully received good title to the Goods from Seller and that, upon payment, the Goods will be free and clear of all liens. Such documentation will include releases and waivers from all parties with viable lien rights.
- D. Buyer shall notify Seller promptly of any deficiency in the required documentation.

### **13.02 *Review of Applications for Progress Payments***

- A. *Review of Applications*
  - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Buyer, or return the Application to Seller indicating in writing Engineer's reasons for refusing to recommend payment.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Buyer, based on Engineer's observations of Seller's progress, as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
  - a. the Goods and Special Services or other obligations of Seller have progressed to the point indicated;
  - b. the quality of the Goods and Special Services or other obligations of Seller are generally in accordance with the Procurement Task Order Documents; and
  - c. the conditions precedent to Seller being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Seller's progress.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
  - a. inspections made to check the quality or the quantity of the Goods and Special Services or other obligations of Seller have been exhaustive, extended to every aspect of the Goods and Special Services or other obligations of Seller in progress, or involved detailed inspections of the Goods and Special Services or other obligations of Seller beyond the responsibilities specifically assigned to Engineer in the Procurement Task Order; or
  - b. there may not be other matters or issues between the parties that might entitle Seller to be paid additionally by Buyer, or entitle Buyer to withhold payment to Seller.
4. Neither Engineer's review of Seller's progress for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
  - a. to supervise, direct, or control the Seller's performance or furnishing of Goods and Special Services or other obligations of Seller; or
  - b. for the means, methods, techniques, sequences, or procedures of construction, manufacturing, fabrication, installation, or shipping, or the safety precautions and programs incident thereto; or
  - c. for Seller's failure to comply with Laws and Regulations applicable to Seller's performance under the Procurement Task Order; or
  - d. to make any examination to ascertain how or for what purposes Seller has used the money paid for the Procurement Task Order Price; or
  - e. to determine that title to any of the Goods or component parts have passed to Buyer free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Buyer stated in Paragraph 13.02.A.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Buyer from loss because:

- a. the Goods and Services are non-conforming, requiring correction or replacement;
- b. the Procurement Task Order Price has been reduced by Change Orders;
- c. Buyer has been required to correct non-conforming Goods and Special Services in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E; or
- d. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Seller and therefore justify termination for cause under the Procurement Task Order Documents.

#### 13.03 *Basis and Amount of Progress Payments*

- A. The basis and amounts of the progress payments will be as provided in the Procurement Agreement, subject to the provisions of this Article 13 regarding reductions in payment.

#### 13.04 *Suspension of or Reduction in Payment*

- A. Buyer may temporarily cease making progress payments, or reduce the amount of a progress payment, even though recommended for payment by Engineer, under the following circumstances:
  - 1. Buyer has reasonable grounds to conclude that Seller will not furnish the Goods or the Special Services in accordance with the Procurement Task Order Documents, and
  - 2. Buyer has requested in writing assurances from Seller that the Goods and Special Services will be delivered or furnished in accordance with the Procurement Task Order Documents, and Seller has failed to provide adequate assurances within ten days of Buyer's written request.
  - 3. In addition to any reductions in payment (set-offs) recommended by Engineer, Buyer is entitled to impose a set-off against payment based on any of the following:
    - a. claims have been made against Buyer based on Seller's conduct in the performance or furnishing of the Goods and Special Services, or has incurred costs, losses, or damages resulting from Seller's conduct in the performance or furnishing of the Goods and Special Services, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
    - b. Seller has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Point of Destination or the worksite;
    - c. Seller has failed to provide and maintain required bonds or insurance;
    - d. Buyer has incurred extra charges or engineering costs related to Submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
    - e. the Goods and Special Services are non-conforming, requiring correction or replacement;
    - f. Buyer has been required to correct non-conforming Goods and Special Services, in accordance with Paragraph 9.03.C, or has accepted non-conforming Goods and Special Services pursuant to Paragraph 9.03.E;

- g. the Procurement Task Order Price has been reduced by Change Orders;
  - h. an event that would constitute a default by Seller and therefore justify a termination for cause has occurred;
  - i. liquidated or other damages have accrued as a result of Seller's failure to achieve Milestones, Substantial Completion, or final completion of the Goods and Special Services; or
  - j. liens have been filed in connection with the Procurement Task Order, except where Seller has delivered a specific bond satisfactory to Buyer to secure the satisfaction and discharge of such liens.
- B. If Buyer refuses to make payment of the full amount recommended by Engineer, Buyer will provide Seller and Engineer immediate written notice stating the reason for such action and promptly pay Seller any amount remaining after deduction of the amount withheld. Buyer shall promptly pay Seller the amount withheld when Seller corrects the reason for such action to Buyer's satisfaction.

#### 13.05 *Final Payment*

- A. After Seller has corrected all non-conformities to the reasonable satisfaction of Buyer and Engineer and furnished all Special Services, Seller may submit its final Application for Payment following the procedures for progress payments.
- B. The final Application for Payment will be accompanied by all documentation called for in the Procurement Task Order Documents (including but not limited to all final operations and maintenance manuals, and any special warranties), a list of all unsettled Claims, and the written consent of surety to the making of final payment.
- C. If, on the basis of final inspection and the review of the final Application for Payment and accompanying documentation, Engineer is reasonably satisfied that Seller has furnished the Goods and Special Services in accordance with the Procurement Task Order Documents, and that Seller has fulfilled all other obligations under the Procurement Task Order Documents, then Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment subject to the provisions of Paragraph 13.02, and present the final Application for Payment to Buyer. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Buyer from loss for the reasons stated in Paragraph 13.02.
- D. If Engineer does not recommend final payment, Engineer will return the final Application for Payment to Seller, indicating the reasons for refusing to recommend final payment, in which case Seller shall make the necessary corrections and resubmit the final Application for Payment.
- E. In support of its recommendation of final payment Engineer will also give written notice to Buyer and Seller that the Goods and Special Services are acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 13.06.
- F. If the final Application for Payment and accompanying documentation are appropriate as to form and substance, Buyer shall, within 30 days after receipt thereof, pay Seller the amount recommended by Engineer, less any sum Buyer is entitled to set off against Engineer's recommendation, pursuant to the provisions of Paragraph 13.04.

- G. Buyer will not make final payment, or return or release included retainage (if any) at any time, unless Seller submits written consent of the surety to such payment, return, or release.

#### 13.06 *Waiver of Claims*

- A. By making final payment, Buyer waives its claim or right to liquidated damages or other damages for late completion by Seller, except as set forth in an outstanding Claim, appeal, set-off, or express reservation of rights by Buyer. Buyer reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Seller will constitute a waiver by Seller of all claims and rights against Buyer other than those pending matters that have been duly submitted or appealed under the provisions of Article 12.

### **ARTICLE 14—CANCELLATION, SUSPENSION, AND TERMINATION**

#### 14.01 *Cancellation*

- A. Buyer has the right to cancel the Procurement Task Order, without cause, at any time prior to delivery of the Goods by written notice. Cancellation pursuant to the terms of this paragraph will not constitute a breach of contract by Buyer. Upon cancellation:
  - 1. Buyer shall pay Seller for the direct costs incurred in producing any Goods that Seller has specially manufactured for the Project, plus a fair and reasonable amount for overhead and profit.
  - 2. For Goods that are not specially manufactured for the Project, Seller shall be entitled to a restocking charge of 10 percent of the unpaid Procurement Task Order Price of such Goods.

#### 14.02 *Suspension of Performance by Buyer*

- A. Buyer has the right to suspend performance of the Procurement Task Order for up to 90 days, without cause, by written notice. Upon suspension under this paragraph, Seller shall be entitled to an increase in the Procurement Task Order Times and Procurement Task Order Price caused by the suspension, provided that performance would not have been suspended or delayed for causes attributable to Seller.

#### 14.03 *Suspension of Performance by Seller*

- A. Seller may suspend the furnishing of the Goods and Special Services only under the following circumstance:
  - 1. Seller has reasonable grounds to conclude that Buyer will not perform its future payment obligations under the Procurement Task Order; and
  - 2. Seller has requested in writing assurances from Buyer that future payments will be made in accordance with the Procurement Task Order, and Buyer has failed to provide such assurances within ten days of Seller's written request.

#### 14.04 *Breach and Termination*

##### A. *Buyer's Breach*

- 1. Seller shall have the right to terminate the Procurement Task Order for cause by declaring a breach if Buyer fails to comply with any material provision of the

Procurement Task Order. Upon termination, Seller shall be entitled to all remedies provided by Laws and Regulations.

2. If Seller believes Buyer is in breach of its obligations under the Procurement Task Order, Seller shall provide Buyer with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Buyer shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Seller may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.

**B. *Seller's Breach***

1. Buyer may terminate Seller's right to perform the Procurement Task Order for cause by declaring a breach should Seller fail to comply with any material provision of the Procurement Task Order Documents. Upon termination, Buyer shall be entitled to all remedies provided by Laws and Regulations.
2. In the event Buyer believes Seller is in breach of its obligations under the Procurement Task Order, Buyer shall provide Seller with reasonably prompt written notice setting forth in sufficient detail the reasons for declaring that it believes a breach has occurred. Seller shall have 7 days from receipt of the written notice declaring the breach (or such longer period of time as Buyer may grant in writing) within which to cure or to proceed diligently to cure such alleged breach.
3. If and to the extent that Seller has provided a performance bond under the provisions of Paragraph 5.01, the notice and cure procedures of that bond, if any, will supersede the notice and cure procedures of Paragraph 14.04.B.2.

**ARTICLE 15—MISCELLANEOUS**

**15.01 *Giving Notice***

- A. Whenever any provision of the Procurement Task Order requires the giving of written notice to Buyer, Seller, or Engineer, it will be deemed to have been validly given if delivered:
  1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

**15.02 *Controlling Law***

- A. This Procurement Task Order is to be governed by the law of the state in which the Goods are to be installed.
- B. In the case of any conflict between the express terms of this Procurement Task Order and the Uniform Commercial Code, as adopted in the state whose law governs, it is the intent of the parties that the express terms of this Procurement Task Order will apply.

**15.03 *Computation of Time***

- A. When any period of time is referred to in the Procurement Task Order by number of days, it will be computed to exclude the first and include the last day of such period. If the last day

of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

**15.04** *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Procurement Task Order, and the provisions of this paragraph will be as effective as if repeated specifically in the Procurement Task Order in connection with each particular duty, obligation, right, and remedy to which they apply.

**15.05** *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Procurement Task Order, as well as all continuing obligations indicated in the Procurement Task Order, will survive final payment, completion, and acceptance of the Goods and Special Services or termination or completion of the Procurement Task Order or of the services of Seller.

**15.06** *Entire Agreement*

- A. Buyer and Seller agree that this Procurement Task Order is the complete and final agreement between them, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Procurement Task Order may not be altered, modified, or amended except in writing signed by an authorized representative of both parties.

**15.07** *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Procurement Task Order.

**15.08** *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

**15.09** *Successors and Assigns*

- A. Buyer and Seller each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Procurement Task Order.

**15.10** *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Seller for any claims, costs, losses, or damages sustained by Seller on or in connection with any other project or anticipated project.

**15.11** *Assignment of Task Order*

- A. Unless expressly agreed to elsewhere in the Task Order, no assignment by a party to this Task Order of any rights under or interests in the Task Order will be binding on the other party

without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Task Order.

15.12 *Severability*

- A. Any provision of this Task Order which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.



#### 14. Definitions

- 14.1. *Balance of the Procurement Task Order Price*—The total amount payable by the Buyer to the Seller under the Procurement Task Order after all proper adjustments have been made including allowance for the Seller for any amounts received or to be received by the Buyer in settlement of insurance or other claims for damages to which the Seller is entitled, reduced by all valid and proper payments made to or on behalf of the Seller under the Procurement Task Order.
- 14.2. *Buyer Default*—Failure of the Buyer, which has not been remedied or waived, to pay the Seller as required under the Procurement Task Order or to perform and complete or comply with the other material terms of the Procurement Task Order.
- 14.3. *Goods and Special Services*—The full scope of materials, equipment, other items, and services to be furnished by Seller, as defined in the Procurement Task Order.
- 14.4. *Point of Destination*—The location where delivery of the Goods shall be made, as stated in the Procurement Task Order.
- 14.5. *Procurement Task Order*—The contractual agreement between the Buyer and Seller identified on the cover page, including all Procurement Task Order Documents and changes made to the Procurement Contract.
- 14.6. *Seller Default*—Failure of the Seller, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Procurement Task Order.
- 14.7. *Procurement Task Order Documents*—All the documents that comprise the contractual agreement between the Buyer and Seller.

#### 15. Modifications to this Bond are as follows: **None**

## SAMPLE AIS CERTIFICATION LETTERS

The following information is provided as a sample letter of step certification for AIS compliance. Documentation must be provided on company letterhead.

<<Date>>

<<Company Name>>

<<Address>>

<<City State Zip>>

### SUBJECT:

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. Xxx
2. Xxx
3. Xxx

Such process took place at the following location:

\_\_\_\_\_

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Sincerely,

<<Company Name>>

Name - *Signed by company representative*

Title

The following information is provided as a sample letter of certification for AIS compliance.  
Documentation must be provided on company letterhead.

<<Date>>

<<Company Name>>

<<Address>>

<<City State Zip>>

**SUBJECT:**

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

Item, Products and/or Materials:

1. Xxx
2. Xxx
3. Xxx

Such process took place at the following location:

---

If any of the above compliance statements change while providing material to this project, we will immediately notify the prime contractor and the engineer.

Sincerely,

<<Company Name>>

Name - *Signed by company representative*

Title

## Exhibit A

### The Automation Group (TAG) Proposal



# Quote

The Automation Group, Inc.

[www.tag-inc.us](http://www.tag-inc.us)

CCB #172838

Phone: 541-359-3755

Quote #221119G

Nov. 19, 2022

Trish Rice  
City of Sweet Home

RE: Sweet Home WWTP - Owner Supplied Equipment

### Project Scope:

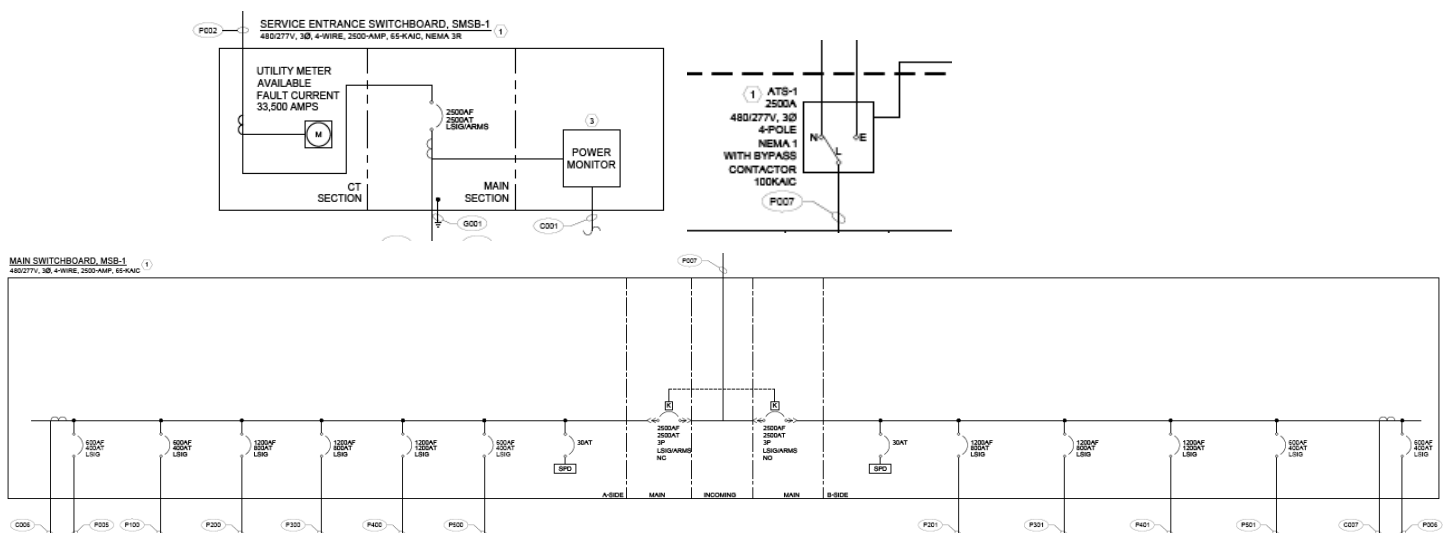
TAG is providing a Quote to supply the following materials for early procurement due to long lead times for the Waste Water Treatment Facility Project.

### Fee Schedule:

Items	Cost \$
<b>TAG Direct to Customer - Switch Gear &amp; Genset</b>	
Switch Gear - Siemens	\$501,785.25
Generator - Cummins	\$328,472.00
Owner Controlled Contingency (4%)	\$33,210.29
Performance and Payment Bonds (3%)	\$25,904.03
<b>Total</b>	<b>\$889,371.57</b>

### 1. Switch Gear:

- SMSB-1, MSB-1 & ATS-1— per Electrical Engineers 1-line below





## Quote

### Bidding area comparisons

Switch Gear	Cost \$	Lead Times
Siemens	\$501,785.25	61-63 Weeks
Eaton	\$509,610.14	48-60 Weeks
Square D	\$711,017.23	61-63 Weeks

### 3. Generator:

- Cummins
  - DQFAC, Commercial Diesel Generator Set, 900kW Standby 60Hz
    - U.S. EPA, Stationary Emergency Application
    - 900DQFAC, Diesel Genset, 60Hz, 900kW
    - Duty Rating - Standby Power (ESP)
    - Emission Certification, EPA, Tier 2, NSPS CI Stationary Emergency
    - Fuel Tank - Sub Base, 1500 Gallon, UL142 Compliant
    - Compliance - Fuel Tank
    - Listing, ULC - S601 - 07
    - Listing - UL 2200
    - Alarm - High Fuel Fill
    - Fuel Tank Connection - Dual Stub Up
    - Control Mounting - Left Facing
    - PowerCommand 3.3 Controller, Paralleling Capable
    - Analog Meters - AC Output
    - LCD Control Display
    - Stop Switch - Emergency, Externally Mounted
    - Signals - Auxiliary, 8 Inputs/8 Outputs
    - Relays - Paralleling Circuit Breaker Control
    - Control Display Language - English
    - Circuit Breaker or Entrance Box or Terminal Box - Left Only
    - Circuit Breaker - 1600, Left, 3P, UL 600, IEC 415, UL Serv Ent 100%
    - Circuit Breaker or Entrance Box or Terminal Box, Right-None
    - Cert - Seismic, IBC2000, IBC2003, IBC2006, IBC2009, IBC2011
    - Bottom Entry, Left
    - Load Connections-None
    - Indication - Ground Fault, Terminal Box (or) Circuit Breaker Box - Left
    - Engine Air Cleaner - Normal Duty
    - Engine Cooling - Radiator, Enhanced High Ambient Air Temperature, Ship Fitted
    - Shutdown - Low Coolant Level
    - Sight Glass - Coolant Level



## Quote

- Coolant Heater - 208/240/480 Volts AC, 40F Minimum Ambient Temperature
  - Voltage - 277/480, 3 Phase, Wye, 4 Wire
  - Test Record - Strip Chart
  - Test Record - Safety Shutdowns
  - Cummins Certified Test Record
  - Standby 5 Year 2500 Hour Parts+Labor+Travel
  - Alternator - 60Hz, 3 Phase, Wye, Extended Range, 105/80C
  - Literature - English
  - Packing - None, Base Mounted Housing
  - Alternator Heater, 120 Volt AC
  - Steel Sound Attenuated Level 2 Enclosure, with Exhaust System
  - Enclosure Color - Green, Steel
  - Vibration Isolators - Earthquake Certified
  - Cooling Air Outlet - Horizontal, Sound Attenuated
  - Battery Group34: C34-HC
  - Battery Charger-10Amp, 120/208/240VAC, 12/24V, 50/60Hz 1
  - Telematics – Cloud - Wi-Fi + Cellular + Ethernet connectivity – Modbus + J1939 (Private – NA variant)
  - Startup Service and 4-Hr Load Bank Test, Demonstration and Testing
- **Bidding area comparisons**

Generator	Cost \$	Lead Times
MTU - 1000kw	\$353,952.75	80-90 Weeks
Cummins - 900kw	\$328,472.00	83-85 Weeks
Cat - 1000kw	\$495,173.90	75-85 Weeks
Kohler - 900kw	\$377,051.65	75-85 Weeks

### Clarification/Exclusions:

- Off loading by Owner or General Contractor
- Generator Fuel to be Provided by City
- Price is for Materials only
- Lead Times for specific materials are very unpredictable at this time and cannot be verified until orders are placed. We are also seeing some items slipping from the predicted delivery dates after order by a few weeks and also seeing some items showing up early. TAG will track progress on orders and provide updates.
- Payments with Credit Cards will have additional charges added to the price below based on the current % rate of the processor.

Thank you,

*Gary Jenks*

Gary Jenks

(541) 912-3766

gjenks@tag-inc.us

TAG standard terms apply